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THE OFFENSE OF SCANDALUM MAGNATUM AS CONSTITUTING CONTEMPT OF COURT.

Not so very long ago the Supreme Court of Missouri by an *obiter dictum*, revived in their own favor that old relic of monarchical government, the offense of *scandalum magnatum*, an offense not differing in principle from that of *lese majeste*, being only an extension of the latter offense in order to protect the other branches of the government, outside of the executive, from scandal mongers and extravagant critics. The Supreme Court of Missouri in the case referred to held, that to scandalize the court and bring upon it the ridicule and contempt of the people (no matter how deserved such ridicule might be, or whether it affected a cause pending before the court), constituted the offense of *scandalum magnatum*, which the court, thus scandalized, could punish summarily, without trial, as for contempt. State v. Shepard, 76 S. W. Rep. 79, 57 Cent. L. J. 101, 402.

It was not to be expected that such a ridiculous revival of ancient despotism, so contrary to the very spirit and genious of American institutions, should be permitted to stand unrebuked. The first note of protest, therefore, comes from the court of criminal appeals of the state of Texas, where it is distinctly and unequivocally held that no matter how defamatory of a court or judge a publication may be, it cannot be regarded as a contempt of court unless it be written and published with reference to a case pending. *Ex parte* Green, 81 S. W. Rep. 723.

In this case the editor of the *Tyler Courier* published a severe denunciation of the trial court, and said that the methods pursued by the court "were not far removed from a public disgrace." The trial court summoned the refractory editor to appear and show cause why he should not be punished as for contempt. On the hearing, however, he was permitted to introduce no evidence as to the truth of his statements, "for the reason that the court was present in the court-room and heard and knew all things that occurred and were referred to in said article, and knew as a fact that said article published by said Green, in so far as the action of the court was concerned, was untrue." In discharging the prisoner the court of appeals said:

"We understand relator to contend that the matter about which he was fined was not written with reference to any pending case in said court, and consequently could not and cannot be treated as contemptuous of the court. Furthermore, the same was legitimate criticism of the court and its proceedings, and is privileged, being protected under our state constitution, which guaranties the liberty of speech and of the press. On the other hand, the state insists that the subject matter of said article is not legitimate criticism, but is defamatory and denunciatory of the court, and is the subject of contempt; that, although said article may not relate to or refer to any case pending before said court, it was defamatory, and calculated to scandalize the court itself and bring it into public disgrace, and so serve to delay, obstruct and embarrass the court in the conduct and trial of all causes, and thus disparage its usefulness as an instrumentality of government.

It may be conceded that the article, by its terms, did not refer to any particular case then pending before the county judge, or, if it did, it is not disclosed what particular case the writer had in view. We are accordingly confronted with the proposition: Can the publisher of a newspaper be held guilty of contempt by using expressions, defamatory of a court and its proceedings, which do not relate to any pending cause? Relator has referred us to a number of cases which he insists are decisive of the question that the court cannot treat as a matter of contempt any criticism, no matter how untrue or defamatory of the court, which is not uttered with reference to some particular case then pending in the court. We have examined these, and the majority of them would appear to bear out his contention. State v. Anderson, 40 Iowa, 207; Stuart v. People (Ill.), 3 Scam. 395; Storey v. People, 79 Ill. 45, 22 Am. Rep. 158; *Ex parte* Hickey (Miss.), 4 Smedes & M. 751; *Ex parte* Wright, 65 Ind. 504; Cheadle v. State, 110 Ind. 301, 11 N. E. Rep. 426, 56 Am. Rep. 199; *Ex parte* Barry, 85 Cal. 603, 25 Pac. Rep. 256, 20 Am. St. Rep. 248; Rosewater v. State (Neb.), 66 N. W. Rep. 640; State v. Edwards (S. Dak.), 89 N. W. Rep. 1011; State v. Kaiser (Oreg.), 23

Pac. Rep. 964, 8 L. R. A. 584; State v. Tugwell (Wash.), 52 Pac. Rep. 1056, 43 L. R. A. 717; People v. Stapleton (Colo.), 33 Pac. Rep. 167, 23 L. R. A. 787; McClatchy v. Superior Court (Cal.), 51 Pac. Rep. 696, 39 L. R. A. 691. In some of the above enumerated cases there was no question as to the pendency of the case about which the publication was made; consequently the question was not directly involved. Some of them, however, did involve the question. There are cases, however, which maintain the contrary view: Com. v. Dandridge, 2 Va. Cas. 409; *Ex parte* Moore, 63 N. Car. 397; *Ex parte* McLeod (D. C.), 120 Fed. Rep. 130; State v. Morrill, 16 Ark. 384; State v. Shepard (Mo. Sup.), 76 S. W. 79; *In re* Chadwick (Mich.), 67 N. W. Rep. 1071. While all of these cases discuss the question elaborately, and announce the doctrine that the publication can be contemptuous although not in regard to a case then pending before the court, still in but two of them was the question directly involved, to-wit, *Ex parte* Moore and *Ex parte* McLeod. So it may be said that a great majority of the American cases require that the publication be with regard to some pending case before it can be treated as contemptuous.

In this state we have no statute defining contempts of court, and we are accordingly relegated to the doctrine of contempts at common law as applied to our written constitution and the spirit and genius of our institutions. As stated above, we gather from the current of authorities, both those cited and others, that there can be no constructive contempts of court with reference to publications reflecting on the court or the judge thereof, unless the publication is not only of a defamatory character, but is untrue, and, in addition thereto, relates to some particular case then pending, and is calculated to embarrass the court in the trial or disposition thereof. As to other publications not relating to a pending case, no matter how defamatory the language used may be with reference to the court or the judge thereof, this will not constitute a contempt, because it cannot be regarded as calculated to interfere with the administration of justice."

NOTES OF IMPORTANT DECISIONS.

LANDLORD AND TENANT—DETERMINING THE VALUATION OF A GROUND LEASE.—A question of occasional interest and importance arises when in the course of a trial it becomes necessary to determine the valuation of a ground lease. The recent case of Springer v. Borden, 71 N. E. Rep. 345, throws strong light on certain phases of this question. In this case, a lessee under a ground lease agreed to pay an annual rent equal to five per cent on the cash value of the vacant ground. In a proceeding to determine such value a difficulty arose as to the basis of valuation,—whether the jury were confined to what the land and improvements erected by the lessee were actually bringing at that time or whether the jury could treat the premises as vacant property, taking into consideration every possible element of valuation. The Supreme Court of Illinois took the latter view, holding further that the lessee could not introduce evidence on the point nor even inject the question into the case, whether it would be profitable to erect a modern building for the remainder of the term. The court said in part: Evidence as to what income the property, with the buildings and improvements on it, produced, was excluded, and it is insisted that the income of property is a proper element to be considered in determining the market value of such property. That may be true in many cases, but in this case the income from the property to be valued was fixed by the lease, and the evidence offered and excluded related to rentals of the buildings and disbursements on account of the property. Whether the lessee could realize sufficient income to enable him to keep his covenant and pay the stipulated rent was not material. He agreed to pay an annual rent of 5 per cent. on the cash value of the vacant ground, and the court was right in excluding evidence as to the value or cost of the buildings or the net income to the lessee, or whether it would be profitable to erect a modern building for the remainder of the term. See also: Goddard v. King, 40 Minn. 164, 41 N. W. Rep. 659; Philadelphia Library Co. v. Beaumont, 39 Pa. 43; Lowe v. Brown, 22 Ohio St. 463.

PRINCIPAL AND AGENT—REVOCATION OF AUTHORITY OF REAL ESTATE BROKER.—In Cadigan v. Crabtree, decided by the Supreme Judicial Court of Massachusetts in May, 1904 (70 N.E. Rep. 1003), it was held that in the absence of any custom or usage to the contrary the right of a real estate broker to work for a commission, as well as his right to impose an obligation on his principal by reason of holding himself ready to proceed as agent, ends upon his discharge by the principal, acting in good faith, no matter what may be the stage of negotiations between the broker and a prospective customer, provided the broker has not yet succeeded in securing a customer ready and willing to accede to the principal's terms. This decision is in accord with the weight of au-

thority. The court cites Sibbald v. Bethlehem Iron Co., 83 N. Y. 378, and adopts the following statement of the law from that New York case: "If, in the midst of negotiations instituted by the broker, and which were plainly and evidently approaching success, the seller should revoke the authority of the broker with the view of concluding the bargain without his aid, and avoiding the payment of commissions about to be earned, it might well be said that the due performance of his obligation by the broker was purposely prevented by the principal. But if the latter acts in good faith, not seeking to escape the payment of commissions, but moved fairly by a view of his own interest, he has the absolute right before a bargain is made, while negotiations remain unsuccessful, before commissions are earned, to revoke the broker's authority; and the latter cannot thereafter claim compensation for a sale made by the principal, even though it be to a customer with whom the broker unsuccessfully negotiated, and even though, to some extent, the seller might justly be said to have availed himself of the fruits of the broker's labor."

A similar principle has recently been applied by the Supreme Court of Minnesota in a case in which a real estate broker had been employed to negotiate a loan .Mott v.Ferguson, May, 1904, 99 N.W. Rep. 804. The following is the official syllabus: "Where a broker is authorized to secure a loan for the owner of real estate, as exclusive agent, for the purpose of taking up a mortgage, the owner impliedly reserves the right to obtain the loan himself, and, if he concludes his arrangements before a person ready, willing and able to take the loan is furnished, the broker is not entitled to commissions. Whether the loan is secured by the owner from a third party, or by a renewal through agreement with the person holding the note and mortgage, is immaterial, so far as concerns the broker's rights to commissions under the implied obligations of the latter's agency. The right to commission in this case being subject to the right of the owner of the property to secure the same himself, the latter having made an oral agreement for the renewal in good faith, which was not enforceable, the statute of frauds cannot be invoked for the protection of the broker to secure commissions."

The court said in part:

"Again, it is urged that, at the time plaintiff notified defendant that she had found a lender who was willing and able to furnish the loan, the negotiations between Menzell and defendant rested wholly in parol, hence as between these parties were not binding or enforceable, which may be conceded. The defendant could not compel Menzell to carry out his agreement if he declined to do so, and he was taking chances in relying thereon, and, although it was carried out in good faith, the fact that the obligation rested upon moral rather than legal grounds until it had been executed inured to plaintiff's benefit; in other words, that, having found a lender who was able and willing to take the loan before the contract between the defendant and the mortgagee was legally concluded, she had earned her commissions and was entitled to the same. It was the privilege of the owner to secure the loan in any practical way that did not interfere with plaintiff's right to obtain a lender before her right was consummated. The plaintiff expected to obtain her commissions by furnishing the defendant a benefit which he might not be able to obtain himself. This was the extent and scope of her authority, as to which she, as well as her employer, took chances. That the owner could do this, and thus supplant the plaintiff's efforts, was implied in the conditions of the employment, and that the defendant, acting in good faith, made an agreement which might be void under the statute of frauds as between the owner and the party with whom he was dealing, cannot be made available to deprive such owner of the practical benefits of his implied rights. Brown on Statute of Frauds, sec. 135; Chicago Dock Co. v. Kinzie, 49 Ill. 289; Wright v. Jones, 105 Ind. 17, 4 N. E. Rep. 281; Ames v. Jackson, 115 Mass. 508.

It is further insisted that, the plaintiff's agency being exclusive, she was entitled to receive notice that the loan had been procured before her authority was revoked by the action of the defendant in making the arrangements with Menzell. The exclusive agency which plaintiff possessed went no further than to prohibit the defendant from interfering with the exercise of her rights in that respect; that is, he could not employ some other agent for the same purpose. Her exclusive agency required of her employer no more than that she could secure the loan which he might secure, but might not employ another to obtain for him. Dole v. Sherwood, 41 Minn. 535. Hence, in the absence of any special agreement that she was to have notice, the exercise of defendant's right at any time was within the conditions of the agency employment, and, while defendant could not capriciously change his mind and deprive plaintiff of compensation in carrying out the object which he was endeavoring to accomplish, he was acting within his undoubted privilege in this instance."—*New York Law Journal.*

THE CANCELLATION OF A FIRE INSURANCE POLICY.

Upon no single subject pertaining to the art of insurance has there been a greater variety of opinion or a greater conflict of authority, including text writers and court decisions than upon the rights of the insurer and the insured respecting the method to be followed in cancelling a policy of fire insurance. It is said to be due (1) to the un-

limited opportunity afforded for great variety of circumstances under which attempted cancellations have been made in connection with losses; and (2) the deflect of court and text writers from principles that underlie written contracts, when considering the subject of cancellation of insurance policies in a manner other than by the mutual agreement of the parties. It is no longer an open question that contracts of fire insurance are to be governed by the same principles as other contracts; and it follows that if the terms of cancellation are unambiguous the policy must be permitted to speak for itself and cannot by the courts, at the instance of one of the parties, be altered or contradicted or added to or modified by parol evidence, unless there is actual fraud or a mutual mistake of facts shown.

Special reference to the opinion of the supreme court in the case of the Northern Assurance Company v. Grand View Building Association is made because of the exhaustive manner in which that court considered some of the fundamental questions respecting policies of insurance that bear on this general proposition; and I believe it will not be amiss to those interested in the subject of fire insurance to examine this case, because it emphasizes the proposition that a policy of insurance is none other than a commercial contract, and as such must be determined by the fundamental principles governing the law of contracts. The very fact that this court of highest authority in the land should deem it necessary after reviewing the many conflicting authorities upon the subject from different states in the union and pointing out the weak points as well as the dangerous ones from a contrary doctrine implies the importance of the proposition. It is there stated in considering the question of the provision of a policy of insurance and the admissibility of evidence to vary its terms that upon principle it is impossible to perceive on what ground such testimony should be received. A policy of insurance is no less than a contract in writing of such a nature as to be within the general rule of law, that a contract in writing cannot be varied or altered by parol testimony. If it be ambiguous in its terms, parol evidence, such as would be competent to remove an ambiguity in other written contracts, may be resorted to for the purpose of explaining its meaning, if it incorrectly or imperfectly expresses the actual agreement of the parties it may be reformed in equity. If in strict compliance with the conditions of insurance with respect to matters that had been done by the insured after the contract had been concluded has been waived, such waiver may in general be shown by extrinsic evidence by parol. Further than this it is not safe for a court of law to go. To except policies of insurance out of the class of contracts to which they belong and deny them the protection of the law, that a contract which has been put in writing shall not be altered or varied by parol evidence from the contract the parties intended to make as distinguished from what appears by the written contract to be that which they have in fact made is a violation of principle that will open the door to the grossest fraud. A court of law can do nothing but enforce the contract as the parties have made it. The legal rule that in courts of law the written contract shall be regarded as the sole repository of the evidence of the parties and that its terms cannot be modified by parol evidence, is of the utmost importance in the trial of jury cases; and cannot be departed from without the risk of disastrous consequences to the rights of the parties." In general it may be said that the right to cancellation on the part of either the insurer or the insured does not exist unless the policy expressly reserves that right to do so.[1]

In some states there are statutes which secure to the parties the right of cancellation of a contract of insurance upon proper notice by one of the parties. Without such a statute, and in the absence of a provision in the policy for cancellation, it cannot be done, except by the mutual consent or agreement of both parties to the contract.[2] A stipulation in a policy that the insurance may be terminated at any time at the request of the insured makes a surrender of the policy for immediate cancellation a termination of the policy at once.[3] And a provision that is intended for the insurer which leaves it for the company to choose how long they

[1] Northern Assurance Co. v. Grand View Building Association, U. S. Sup. Court, Vol. 183, page 306.

[2] Alliance, etc., Ins. Co. v. Swift, 10 Cush. (Mass.) 433.

[3] Crownpoint Iron Co. v. Ins. Co., 127 N. Y. 608, 14 L. R. A. 147.

shall be bound, or leave the policy in force, notice of cancellation to the insured by virtue of it, operates as a termination of the policy, *ipso facto*.[4]

There can be no cancellation, of course, at such a time or under circumstances that may operate as a fraud; or after rights have been fixed; such as a notice to cancel, pending an apaoaching conflagration which threatens to destroy the insured's property.[5] Or notice of a previous election to cancellation before the company's liability became fixed by fire.[6] The usual provision in a standard fire insurance policy, authorizing cancellation, is in the following language: "This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or becomes void or ceases, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or at last renewal, this company retaining the customary short rate, except that when this policy is cancelled by this company by giving notice it shall retain only the *pro rata* premium."

This is the provision in the standard policies of New York, New Jersey, Rhode Island, Louisiana, South Dakota, Michigan, North Dakota and North Carolina.

Colorado: The statute provides: "The superintendent of insurance shall refuse to authorize any such company, association or corporation to do business in this state whenever the form of policy contract issued or proposed to be issued by any such company * * * does not provide for the cancellation at the request of the insured, the premiums having been actually paid, that the unearned portion shall be returned on surrender of the policy or last renewal, the company in no event retaining the amount in excess of the amount shown to be the earned portion of said premium as per customary short rate."

Iowa: "At any time after maturity of a policy, assessment or installment provided for in the policy, or any note or contract for the payment thereof, or after the suspension, forfeiture or cancellation of any policy or contract of insurance, the insured may pay to the company the customary short rates and cost of action, if one has been commenced or judgment rendered thereon, and may then, if he so elected, have this policy and all contracts or obligations connected therewith, whether in judgment or otherwise, cancelled, and they and each of them thereafter shall be void, and in case of suspension, forfeiture and cancellation of any policies or contracts of insurance, the assured shall not be liable for any greater amount than the short rates earned at the date of such suspension, forfeiture or cancellation and the costs herein provided."

Massachusetts and Maine: "This policy may be cancelled at any time at the request of the insured and shall thereupon be entitled to a return of a portion of the above premium remaining after deducting the customary monthly short rates for the time this policy shall have been in force. The company shall reserve the right after giving written notice to the insured and to any mortgagee to whom the policy is made payable and tendering to the insured a ratable proportion of the premium to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks."

Minnesota: "Ten days' notice of cancellation is required."

Mississippi: "No notice required to the insured, mortgagee must be given ten days' notice."

Nebraska: "On demand of the insured a company must cancel his policy or pay to him or his representatives the net amount of premium received by the company after deducting the actual compensation of the agent for securing the issue of the policy and also deducting the customary short rate premium for the expired time of the full term for which said policy was issued or renewed. Anything in the policy to the contrary notwithstanding."

New Hampshire: "Policy may be cancelled at short rates by the insured on *pro rata* at ten days' notice by the company."

Ohio: "Policy form must contain provision for cancellation at any time upon the written request of the person insured. Short rates

[4] Manchester Ins. Co. v. Ins. Co., 91 Ill. App. 609.
[5] Home Ins. Co. v. Heck, 65 Ill. 111.
[6] Massasoit Steam Mills Co. v. Ins. Co., 125 Mass. 110.

may be charged on cash policy, and the holder of a mutual policy must pay his proportion of losses occurring before cancellation before his note can be surrendered to him."

Wisconsin—The Wisconsin provision differs slightly: "This policy shall be cancelled at any time at the request of the insured or by the company by giving five days' notice of such cancellation; unless during a time in which the hazard shall be increased solely by the act of God, and in such case and during such time of such increase of the hazard the company shall not cancel this policy, except upon sixty days' notice of such cancellation, without the consent of the assured. If this policy be cancelled as hereinbefore provided, or be void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the *pro rata* premium:"

In the states not mentioned there is no statute provision for notice to the insured or by the insured to the insurer required.

While a policy of insurance has thus become a contract in fact by judicial determination as it has been in theory for so many years; it is not a promissory note payable in the event of a fire.[8] For a comparatively small sum the insured undertakes to guarantee the insurer against loss or damage upon the terms and conditions agreed upon in the policy and upon no other, and when the insured is called upon to pay, in case of loss, it may justly insist upon the fulfillment of the contract conditions. Justice as determined by the contract and not generosity is what must control the parties in interest; in other words, insurance is not a speculation, but an indemnity and is required continually and constantly to adapt itself to new conditions, new hazards and circumstances not within the contemplation of the parties. It is based upon the principle of co-operation by spreading what would otherwise be a serious personal affliction or loss over a large number of property owners and thus lessening the personal intensity; as has been said in this connection, "through his policy of insurance the policy holder and loser is enabled to call upon the community as a whole—because under existing conditions nearly all property is insured—to come to his assistance and to make good the wealth of which the fire has deprived him and in this connection the insurance company simply acts as the intermediatory for the distribution of this fund. The power and right of termination is as necessary as the right to contract in the first instance. It has always been regarded as competent for the parties to the contract after it has been entered upon to subsequently waive, modify, dissolve or annul it by parol or otherwise.[9]

A policy of insurance therefore being treated in the same manner as less numerous forms of contracts are treated and without any hallucination or sentiment, the usual stipulation as to how to effect cancellation appeals to the good, sound, conservative judgment of the business public. Power is granted to each to terminate the contract and the manner of exercising the power or effecting the cancellation is provided in the policy or by a statutory provision and even in some instances it requires reference to both. The manner of exercising this right of cancellation by either party after the contract has been made and entered upon so that it is an executory contract can only be by strict compliance with the provisions of the policy relating to it and any statutory regulations bearing in the subject.[10] The length of time required to effect cancellation by the insured under the statutory form of a fire insurance policy is five days. The same time is generally stipulated in policies used in states where no statutory provision obtains. Thus, the length of time required to terminate a policy of fire insurance after due notice has been given has practically become uniform. Where the time is stipulated cancellation cannot be effected in a shorter period, except, of course, by consent of the parties.[11] In states having the standard form for a fire insurance policy, it cannot be term-

[8] 56 Cent. L. J. 24.

[9] Brown v. Everhard, 52 Wis. 207; MacNisch v. Reynolds, 95 Pa. St. 486; Hillock v. Ins. Co., 54 Mich. 531; Bingham v. Ins. Co., 74 Wis. 498; Beach on Ins. secs. 830, 1257.

[10] Rothschild v. Ins. Co. 74 Mo. 41 Am. Rep. 303; Runckle v. Ins. Co., 6 Fed. Rep. 143; Wicks v. Ins. Co., 107 Wis. 606.

[11] Wicks v. Ins. Co., 107 Wis. 606; Clark v. Ins. Co (Me.), 35 L. R. A. 276.

inated or modified in any other manner or form than that provided by law. The right of waiver has been materially abridged by the law providing for this standard form of policy and in such states it is provided that only certain terms of the policy can be waived and that must be in a specified manner. The general provisions of the form of policy, form not only the contract between parties, but becomes the declaratory law of the state.[12] Neither party to such a policy of insurance has any volition regarding the terms, except such as are provided by law, and those must be in the manner prescribed. Although a policy is in the form of a contract yet it is in the terms expressly prescribed by the statute of the state, the only form of a policy which the parties could make, and not only that it is the only form of contract which the parties have power to make; and the terms of the policy are by the express command of the statute, and its provisions are the statutory law of the state, being a law then as well as a contract, its provisions are binding upon the parties to it. They cannot be waived, modified, abandoned, disregarded or changed by agreement, save in the manner and to the extent provided in the respective state. The Supreme Court of Wisconsin said on this subject:[13] "As the law becomes better known and the terms of the standard policy better understood, it is manifest that it will be more valuable to the business world. * * * More critical examination reveals the undoubted fact that the law was not passed solely for the protection of the insured. It provides in clear and distinct terms that other conditions may be printed or written upon or attached to the policy, but that they shall not be inconsistent with nor a waiver of any of the provisions or conditions of the standard policy. In thus providing that other conditions may be incorporated in the policy by writing or printing other methods are plainly excluded under other familiar principles. The intent plainly was, and is, so far as the condititions and provisions of the standard policy go, they shall govern, and that they shall not be omitted, annulled, changed or waived in any manner. Other provisions not conflicting with them may be added by writing or printing, but the condition of the standard policy must remain unimpaired." The provision for cancellation of a policy is not one of the provisions in the policy, that by law, that is, by the terms of the policy, can be modified or changed by agreement; hence, the standard policy in such states as prescribe by law a form for the policy cannot be cancelled in any other manner than the one provided by law unless the parties shall agree to a different method of cancellation. After a policy is put into effect in any manner in such states it cannot be terminated by any act of the parties, except by agreement, unless it is done within the manner prescribed by law which is the stipulation found in the standard policy. The reason for this is that the provisions of a policy or the agreement of the parties subsequent to the making of the policy cannot run counter to those of the statute of the state in which the contract is made.[14]

In the Ohio case discussing this question the court took occasion to say: "That a statute cannot be treated as conferring upon the assured a mere personal privilege which may be waived or qualified by agreement. It has a broader scope. It moulds the obligations of the contract into conformity with its provisions and it establishes the rule and measure of the insurer's liability. Terms and conditions embraced in a policy inconsistent with the provisions of the statute are subordinate to it and must give way."

Judge Brewer in discussing the right of the parties to waive the Missouri statute as to forfeiture, after the payment of two annual premiums, held, that a provisionin a policy which required three annual premiums before the insured was entitled to temporary insurance, was void and in contradiction of the statute. What may be said or authorities cited from states having a form of standard policy regarding the subject of cancellation does not apply to states having a standard form of policy, unless it be in such states where the provision of the standard form of policy are not mandatory in this regard;[15] or the courts of the state do not treat the pro-

[12] Hamilton v. Ins. Co., 156 N. Y. 327; Temple v. Ins. Co., 109 Wis. 372.

[13] Straker v. Ins. Co., 101 Wis. 413; Bourgeois v. Ins. Co., 86 Wis. 609; Bigelow v. Ins. Co., 94 Me. 39; Franklin v. Ins. Co. (N. H.), 47 Atl. Rep. 91.

[14] Habens v. Ins. Co. (Mo.), 26 L. R. A. 107; Thompson v. Ins. Co., 45 Wis. 388; Seyk v. Ins. Co., 74 Wis. 67; Queen Ins. Co. v. Leslie, 47 Ohio St. 469.

[15] Wall v. Equitable Ins. Co., 32 Fed. Rep. 273.

visions of the standard form of policy the equivalent of a statutory provision.[16] Notice of cancellation is required by the policy provision, as well as by statute, where the right of cancellation is preserved and when required either by statute or the policy provision, it must be in strict conformity to the requirements. It must be a notice of actual cancellation, that is, it must be unequivocal, and not a mere notice of a desire to cancel or a notice that the policy will be cancelled, or a notice to cancel. Anything short of cancellation will not answer.[17] The notice to cancel sent by mail is ineffectual, unless received by the insured.[18] A notice must be given the assured and it will not answer to give it to the local agent of the insurance company, or to any one who is not under obligation to pay the premium.[19] A notice to a broker or person who solicited or procured the insurance to be written for the insured and not communicated to the assured himself does not cancel the policy, or in other words, the appointment of one as an agent to procure insurance does not authorize him to accept a notice of cancellation of the policy that he has obtained under such authority.[20]

If an agent who procured the insurance has authority to accept for the insured the company's notice of cancellation of an existing policy, then notice of cancellation on the agent is sufficient notice to the insured. Such authority may be directly given or may be inferred from a course of dealing between the parties involving such transactions, but there is no presumption that the agent to procure a policy of insurance has authority after he has procured and delivered it to the insured to receive notice of cancellation and discharge the policy.[21]

The general principle controlling the law of agency, whereby the principal may ratify by acquiescence or otherwise the act of his agent applies in this connection so that a broker who has assumed to receive notice of cancellation which is afterward ratified by the insurer or when notice of cancellation has been given the broker and the insured has expressly or by his actions ratified the act of the broker the notice is effectual.[22] An insurance broker must be distinguished from an ordinary agent in this, that he is a person authorized to do a particular thing and no more.[23] A broker may have the power of substitution of one policy for another or not depending upon the scope and extent of his authority to represent the insured in obtaining insurance and receiving notice of cancellation. It frequently occurs that an agent authorized to issue policies receives an order for insurance from a broker authorized to procure insurance for the insured and after the insurance is completed the agent is instructed to cancel and a notice of cancellation is given the broker, and at the same time furnished with policies to take the place of the policies ordered cancelled. Whether or not, under such circumstances there is an effectual cancellation by substitution, the transactions not coming to the knowledge of the insured depends entirely on the scope and the extent of the broker's authority to act for the insured.[24] The right of cancellation at the instance of the company requires that in addition to giv-

[16] Maine and Mass.

[17] Wood on Ins., sec. 113; Ostrander on Ins., p. 58; Mohr, etc., v. Ins. Co., 3 Fed. Rep. 74; Quong Tue Sing v. Ins. Co., 86 Cal. 566; Clark v. Ins. Co., 35 L. R. A. 276; Davis v. Ins. Co., 95 Wis. 239; Runkle v. Ins. Co., 6 Fed. Rep. 143; German Ins. Co. v. Rounds, 35 Neb. 752; Gardner v. Ins. Co., 58 Mo. App. 611; Van Volkenburg v. Ins. Co., 51 N. Y. 465.

[18] Farnom v. Ins. Co., 83 Cal. 246.

[19] Chadwin v. Ins. Co., 31 Fed. Rep. 533; King v. Ins. Co., 55 Ind. 43; Von Wien v. Ins. Co., 54 N. Y. Supp. 276.

[20] Quong Tue Sing v. Ins. Co., 86 Cal. 566, 10 L. R. A. 144; British Ins. Co. v. Cooper (Col. App.), 58 Pac. Rep. 592; Broadwater v. Ins. Co., 34 Minn. 465; Rothschild v. Ins. Co., 74 Mo. 41; Herman v. Ins. Co., 100 N. Y. 411; Bodey v. Ins. Co., 63 Wis. 132; Kooistra v. Ins. Co., 81 N. W. Rep. 568; White v. Ins. Co., 93 Fed. Rep. 161; Merchants Ins. Co. v. Schults (Kan.), 57 Pac. Rep. 306; Johnson v. Ins. Co., 63 N. E. Rep. 610; Grace v. Ins. Co., 109 U. S. 278.

[21] Johnson v. Ins. Co., 63 N. E. Rep. 610; Hamm Realty Co. v. Ins. Co. (Mich.), 87 N. W. Rep. 933; Ikeller v. Ins. Co., 53 N. Y. Supp. 323; Snider v. Ins. Co. (N. J.), 50 Atl. Rep. 509; Mich. Pipe Co. v. Ins Co. (Mich.), 20 L. R. A. 277; Hubbard v. Ins. Co., 80 Fed. Rep. 681; Holbrook v. Ins. Co., 117 Cal. 561; Lewis v. Ins. Co., 4 App. D. C. 66; Brooks v. Ins. Co., 83 Md. 34; Knabe, etc. v. Ins. Co., 171 Mass. 265; Davis v. Ins. Co., 67 N. H. 335; Fromherz v. Ins. Co., 7 S. Dak. 187; Scheur v. Ins. Co., 88 Wis. 561; Stone v. Ins. Co., 105 N. Y. 543; Rennolds v. Ins. Co., 36 Mich. 502.

[22] White v. Ins. Co., 103 Fed. Rep. 260.

[23] Elliott on Ins., sec. 157; Gude v. Ins. Co., 53 Minn. 220; Burnheimer v. Ins. Co., 14 Colo. 518; Ostrander on Ins., sec. 45; Kleever v. Ins. Co., 129 Ill. 599; Hamlit v. Ins. Co., 36 Fed. Rep. 118; Thompson v. Ins. Co., 82 Fed. Rep. 406, 92 Fed. Rep. 127.

[24] Clark v. Ins. Co., 35 L. R. A. 276; Quong Tue Sing v. Ins. Co., 10 L. R. A. 144.

ing the notice provided in the policy or by law, that it must return the unearned premium on surrender of the policy or to effect cancellation. The standard form of policy provides that the unearned premium must be paid to the insured on surrender of the policy by the insured. Whether it is necessary under this form of policy to pay the premium at the time the notice is given or at the end of the five days or upon the surrender of the policy there is conflict in authority. In Tisdell v. Ins. Co.,[25] that court held, although by a divided court in construing the provision of the standard policy relating to cancellation at the instance of the company that it was no longer an open question in that court, but that the insurer must return or tender the unearned premium in order to effect a cancellation.[26]

In Swartzchild v. Ins. Co.,[27] the federal court reviewing the whole subject, and including the case in New York, held, that the return or offer to return the unearned premium under the standard policy was not necessary on the part of the company to effect cancellation. That the policy was cancelled by the notice at the expiration of the five days from the notice given by the company.

Oshkosh, Wis. M. C. PHILLIPS.

[25] 155 N. Y. 163, 40 L. R. A. 765.

[26] 116 Fed. Rep. 653.

[27] Christman & S. Banking Co. v. Ins. Co. (1898), 1 Mo. App. 335; Phœnix Ins. Co. v. Munger Imp. Cotton M. Co. (Tex.), 49 S. W. Rep. 271; Philadelphia C. Co. v. Manhattan F. Ins. Co., 8 Pa. Dist. Rep. 261.

INTOXICATING LIQUORS — LIABILITY OF DRAMSHOP KEEPER FOR CARE GIVEN INTOXICATED PERSON.

SCHULTE v. SCHLEEPER.

Supreme Court of Illinois, June 23, 1904.

Section 8 of the dramshop act (Hurd's Rev. St. 1903, p. 779, par. 8), providing that every person who by the sale of intoxicating liquors causes the intoxication of another person shall be compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, does not authorize a recovery where the disability which makes the provision made for the intoxicated person necessary results, not from the intoxication, or from anything consequent thereupon, but from the independent act of a third party, which is the direct and immediate cause of that disability, such as an assault by such third person on the intoxicated person.

This was an action of debt brought by Anton Schulte, plaintiff in error, in the circuit court of Calhoun county, against Tobias Schleeper and Joseph Menke, defendants in error. The declaration consisted of two counts. The first count alleged that the defendants sold intoxicating liquors to John Pohlman and Frank Brock on March 9, 1902, in consequence of which Pohlman and Brock became intoxicated, and while so intoxicated Pohlman assaulted Brock with a buggy hub and spoke, and inflicted upon the latter divers injuries; that plaintiff thereafter took charge of Brock while he was so intoxicated, and kept, cared for, and provided for him for 231 days, by reason whereof an action has accrued to the plaintiff, and for which he is entitled to $1,538 as compensation, and the further sum of $2 per day for each day Brock was so kept amounting to the further sum of $462. The second count differs from the first in that it alleges that defendants sold the liquors to Brock only, and that Brock became intoxicated. A demurrer, general and special in its nature, was interposed to the declaration, and was sustained. Plaintiff elected to stand by his declaration, and judgment was entered in favor of the defendants. Schulte appealed to the appellate court for the third district, where the judgment of the circuit court was affirmed, and he now brings the cause to this court by writ of error. The action was brought under the provisions of section 8 of the dramshop act, and the reason argued by the defendants in error in support of the action of the circuit court in sustaining the demurrer is that the declaration shows that the condition of Brock was not occasioned by the liquors sold, but was occasioned by the assault made upon him by Pohlman, and that, the sale of the liquors not being the proximate cause of the injuries to Brock, the defendants are not liable in this action.

SCOTT, J. (after stating the facts): Section 8 of the dramshop act (Hurd's Rev. St. 1903, p. 779, par. 8) provides: "Every person who shall, by the sale of intoxicating liquors, with or without a license, cause the intoxication of any other person, shall be liable for and compelled to pay a reasonable compensation to any person who may take charge of and provide for such intoxicated person, and two dollars per day in addition thereto for every day such intoxicated person shall be kept in consequence of such intoxication, which sums may be recovered in an action of debt before any court having competent jurisdiction."

It appears from the declaration herein that defendants in error sold intoxicating liquors to Frank Brock, who became intoxicated from drinking the same, and, while he was intoxicated, John Pohlman made a violent assault upon him, "and that, by reason of the said striking of the said Brock by the said Pohlman, the said Brock became unconscious, delirious and helpless." Plaintiff in error took charge of and provided for Brock during his illness consequent upon the injuries resulting from the assault, and seeks to recover for so doing under the section of the

statute above set out. By one count of the declaration it is also charged that Pohlman at the time he made the assault was intoxicated, and that this intoxication resulted from drinking intoxicating liquors sold him by defendants in error. This is immaterial in an action brought under section 8, *supra*, as it does not authorize a recovery for care given and provision made for one who has received an injury at the hands of an intoxicated person.

Counsel for plaintiff in error argue that if Brock was assaulted while intoxicated, and their client took charge of him while intoxicated, then a recovery should be had under this section of the dramshop act for the care exercised over and provision made for Brock on account of his disabilities consequent upon the assault. It appears from this declaration that the services here rendered were made necessary by the injuries resulting from the assault sustained by Brock while intoxicated, and the only question is whether such services so made necessary are within the terms of the section under which the action is brought.

In Brannan v. Adams, 76 Ill. 331, this statute was under consideration, and we there said (page 335): "The language evidently contemplates two conditions in which the person cared for may be. The first is manifestly simply to take charge of and provide for him whilst drunk. For that a reasonable compensation is allowed. Then what is the other condition? It would seem to be for necessarily keeping him in consequence of such drunkenness. If sickness ensue from, and as a consequence of, such drunkenness, or if whilst drunk he should injure himself or become disabled as a consequence of his drunkenness, and it thereby became necessary that care should be bestowed upon him, then the person doing so would be entitled to two dollars a day during, and only during, the time that such care should be necessary. This, it seems to us, is the fair and reasonable construction of the statute."

The dramshop act is highly penal in its character. It provides remedies unknown to the common law, and we have invariably held that it should be strictly construed, and that a plaintiff must bring himself clearly within its terms. Brannan v. Adams, *supra;* Freese v. Tripp, 70 Ill. 496; Meidel v. Anthis, 71 Ill. 241; Cruse v. Aden, 127 Ill. 231, 20 N. E. Rep. 73, 3 L. R. A. 327.

Does this declaration show that this man's disability, which made the services rendered by appellant necessary, resulted from his intoxication? Was the intoxication the proximate cause of the disability? In Shugart v. Egan, 83 Ill. 56, 25 Am. Rep. 359, the plaintiff's husband, while in a state of intoxication caused by intoxicating liquors purchased from the defendant, insulted one McGraw, who thereupon stabbed him, inflicting a wound, whereof he died. This court there said: "It is a natural and probable consequence of letting a drunkard have liquor that he shall become intoxicated, and by reason thereof suffer mental or physical impairment, waste his means, and do violent, absurd, and silly acts, for experience proves that these results, in general, in greater or less degree, follow. But it is the exception that a drunkard is slain or violently assaulted, while in a state of intoxication, for words spoken or acts done by him while in that condition, and, when it does happen, it is, in general, because of the wicked and malicious heart of the assailant, who is ready to avail of every pretext to gratify his brutal and murderous propensities, and it is no more to be anticipated than any other criminal act of a third party"—and held the intoxication not the cause of the injury. The same conclusion was reached in Schmidt v. Mitchell, 84 Ill. 195, 25 Am. Rep. 446, where the intoxicated man attempted to break into a house in the nighttime, and received a wound from a bullet discharged at him by the householder.

Where the disability which makes necessary the care given and provision made for an intoxicated person results, not from the intoxication, or from anything consequent upon that intoxication, but from the independent act of a third party, which is the direct and immediate cause of that disability, there can be no recovery against the dramshop keeper under section 8, *supra*. Shugart v. Egan, *supra*; Schmidt v. Mitchell, *supra*; Schroder v. Crawford, 94 Ill. 357, 34 Am. Rep. 236. A like rule is announced by Krach v. Hellman, 53 Ind. 526, and Roach v. Kelly, 194 Pa. 24, 44 Atl. Rep. 1090, 75 Am. St. Rep. 685.

Plaintiff in error then contends that the question of whether the intoxication or the assault was the proximate cause of Brock's disability is a mixed question of law and fact, which must be submitted to a jury under proper instructions from the court, and which cannot be determined upon a demurrer to the declaration. The question, what was the proximate cause of an injury? is one for the jury where an issue is formed and a trial had by a jury, and there is any evidence tending to show that the wrong complained of was the proximate cause of the injury. Meyer v. Butterbrodt, 146 Ill. 131, 34 N. E. Rep. 152. But where the question is presented by a demurrer to the declaration, it is one of law, and was so treated by us in the case of Hullinger v. Worrell, 83 Ill. 220.

The demurrer to the declaration in the case at bar was properly sustained. The judgment of the appellate court will be affirmed. Judgmen affirmed.

NOTE.—*Recent Cases on Grounds of Action Under the Civil Damage Laws.*—No cause of litigation gaining more rapidly in public favor than what arises under the terms and provisions of what are known as Civil Damage Laws. The great majority of the American public, while not possibly favoring prohibition, are alive to the dangers of the "open saloon," and are willing to insist that such business shall be run at the peril of the saloon keeper, *i. e.*, that the latter shall be liable for all damages resulting

from his sale of liquor to drunkards or in sufficient quantities to cause intoxication.

On this rapidly growing subject of the law the most recent cases are eagerly sought as showing in what directions this field of litigation is growing. We call attention at this time to some of the most important cases on this very important subject.

In the case of Horire v. Halfman, 156 Ind. 470, 60 N. E. Rep. 154, it was held that a saloon keeper who sells liquors to an intoxicated person, by which the latter becomes so crazed that he commits a homicide, and is sent to the penitentiary therefor, is liable to an action for loss of support by the wife of the intoxicated person. The court cites the following authorities: Bacon v. Jacobs, 63 Hun, 51, 17 N. Y. Supp. 323; Wightman v. Devere, 33 Wis. 570; Hutchinson v. Hubbard, 21 Neb. 33, 31 N. W. Rep. 245; Schneider v. Hosier, 21 Ohio St. 98; Woolheather v. Risley, 38 Iowa, 486; Hackett v. Smedsley, 77 Ill. 109; Beem v. Chestnut, 120 Ind. 391, 22 N. E. Rep. 303. See also rule to same effect in favor of child. Loftus v. Hamilton, 105 Ill. App. 72.

Another interesting decision is that of League v Ehmke (Iowa), 94 N. W. Rep. 938, where it was held that where the prior failure of the plaintiff's husband to support her was due to habitual intoxication, and such condition was caused to continue by sales of liquor made by defendant, plaintiff was entitled to recover damages resulting from the continuance of such condition by reason of defendant's acts, so far as they caused or contributed to the injury.

It sometimes happens that a mother depends largely for support on a minor child. The law very quickly meets the exigencies of this case. Lassman v. Fidelia Knights, 89 Ill. App. 437. In this case it was held that a declaration alleging that the earnings of plaintiff's minor son belonged to her; that defendants produced his intoxication by selling him liquor; that, in consequence of such intoxication, the son squandered earnings so belonging to plaintiff, and his earning capacity was reduced and he was rendered unable to obtain steady employment, stated a cause of action.

While the position taken by the court in the principal case as to strict construction of the civil damage acts, may be technically true, such statement must be accepted with the reservation declared in the recent case of Gardner v. Day, 95 Me. 558, 50 Atl. Rep. 892, where it was held that though the statute gives a remedy unknown to the common law, it should nevertheless be so construed as to carry out the purpose intended.

We now come to a case where a husband compels his wife to leave home and deserts her. Waxmuth v. McDonald, 96 Ill. App. 242. In this case it was held that where a husband by his use of intoxicating liquors and cruel treatment, compels his wife to take refuge away from his house, and flees to parts unknown, leaving the wife destitute, and his intoxication is caused by keepers of dramshops, she is entitled to have her action against them under the dramshop act.

Another question of importance and one raised by the principal case is as to whether the proximate cause of the injury must necessarily arise out of the intoxication or whether the intervening or concurring act of a third person may nevertheless not preclude a recovery. The former ultimatum seems to be the law. Baker v. Summers, 201 Ill. 52, 66 N. E. Rep. 302. In this case two persons quarreled in a gambling room, which was over a saloon, and one was killed by the other, and the widow of the deceased sued the saloon keeper, claiming that sales of liquor to the deceased, or to the slayer, or to both of them, caused the intoxication of one or both, which intoxication was the effective cause of the death. The court held that an instruction predicating liability on the sale was error, inasmuch as defendant would not be liable on account of its sale and intoxication resulting therefrom, unless the intoxication was the effective cause of the death.

JETSAM AND FLOTSAM.

THE EVILS OF DIVORCE LITIGATION.

In his annual address to the Indiana Bar Association on July 14, 1904, Hon. William P. Breen, president of the association, presented a forceful arraignment of the divorce evil. Mr. Breen's address was as follows:

While the subject of the president's address has not been prescribed in our constitution or our by-laws, it should be in harmony with the expressed objects of our association, "the advancement of the science of jurisprudence and the promotion of the administration of justice." It seems highly proper that it should deal with a question of present moment, rather than with some retrospect of the past. If there be an evil in the law, it seems to me that this is the time and place for its discussion, and in that spirit I desire to present for your thoughtful consideration some views on the subject of divorce.

Lawyer's Vital Interest.—No class is more interested in the permanence of the state, or more profoundly intelligent in pointing out the dangers which beset our political being, than the lawyers. A philosophical thinker has well said: "The material progress of the world, the mastery of man over nature through a knowledge of her laws, the diffusion of knowledge and of the opportunities for acquiring it, are themes which ceaselessly employ the tongues of speakers and the pens of journalists, while they swell with pride the heart of the ordinary citizen. But they are not the things upon which the moral achievement of mankind or the happiness of individuals chiefly turns. They co-exist, as the statistics of recent years show, with an increase over all, or nearly all, civilized countries of lunacy, suicide and divorce."

In all the great commonwealths which are the constituent parts of the Union, save in South Carolina, are to be found statutes permitting divorce. In South Carolina, with the exception of six years during the reconstruction period following the civil war, the legislature has been the only court clothed with power to grant divorces, and in that great state, of proud historic memories, divorces have been conspicuously few. In all the states it is observable that the frequency of divorces has fast outpaced a material, industrial and commercial growth unprecedented in the world's history. Is there any menace to the perpetuity of our boasted institutions in the increase of divorce? The family is the foundation stone of our civil polity. The family, in this civilized age, cannot exist without marriage. Marriage is the means; the family is the end; both must be sacredly preserved. Marriage is, therefore, indispensably necessary to the life of the state—the only source of its life blood. These propositions are axiomatic and need neither argument nor illustration to press their full truth to conviction in the intelligent mind.

Four Arch Enemies.—Whatever interferes with the family and its purposes and aims in our economy is baneful. Death, war, disease and divorce are the arch enemies of the family. Death is an inexorable,

unconquerable fee. The pervasive wealth of human genius has found neither armor nor weapon of defense for use in the contest waged with our sure and grim destroyer. The higher sense of our civilization indulges hopes that before the end of this dawning century, pregnant with great possibilities, war shall have been eliminated from our civic economy and, as wager of battle passed into desuetude before the umpirage of the courts, contests of nations shall no longer be tried by wager of battle, but be settled by the arbitrament of international peace tribunals. International arbitrament has made some progress largely attributable to the sense and judgment of the lawyers of the world, who regard the results of the past as but an earnest of the magnificent arbitral achievements to be unfolded by the twentieth century. The medical profession is making gigantic strides in repelling the advances and minimizing the force and results of disease, both physical and mental. The marvelous discoveries evolved by the mentality of the surgical brain during the past fifty years have enduringly impressed a thoughtful world, reveling in the prodigies of industrial, inventive and intellectual progress. The legal profession also, in conformity with the advanced spirit of the times, has made many simplifications of legal methods and wrought many changes in the law for the protection of human rights and the benefit of mankind.

Question Faces Lawyer.—The lawyer who drafts a petition in a divorce cause where the custody of children of tender age is the real issue, who looks thoughtfully and philosophically at the exercise of the judicial power which in that case takes from out the control of a father a baby girl and from out the control of a mother a little boy—her own flesh and blood—must ask himself, is there no way for the avoidance of the disruption of this family? Cannot something be done to prevent the girl from losing the home influence of the father and the boy from losing the home love of the mother? Is the system right which dismantles the home and deprives the child of one parent? Every lawyer of experience has seen agonizing cases where a mother, in impenetrable mental distress, has bidden farewell to her child in the shadows of the court room, or where a father, alive to the paternal instinct, with a heart too full for expression, has despairingly imprinted a parting kiss on the lips of his own girl. And when these scenes of terrible import were over, and the excitement of a disgraceful trial had passed, who shall tell the thoughts that agitated the hearts of the contending father and mother? If they were to speak their convictions, fashioned by their cooler reason, would they say that their separation was worth the sacrifice of a trial of marital differences before the world—the sacrifice of home and the ever-present sacrifice of the home companionship of their own children? Would they say, in their heart of hearts, that that system, which they invoked and which brought this train of untoward circumstances, was right?

Can System be Defended?—A young man who has been maried a few years to a young woman, because of mutual disagreement starting from trifles or mistakes which fill the lives of the young, goes to the court for relief from seeming marital woes. No children have followed—I will not say "blessed"—this union. Under the elastic "cruel treatment" provision of a divorce law a dissolution of the marriage contract results. He goes forth with the youthful impression, on the surface, that marriage is a failure, while probably in his innermost heart he communes with himself and reasons how easily, as he gains sense, the misunderstandings with the girl he wooed and won might not have occurred. As a citizen does he as a rule, becomes better or more valuable after the divorce? She goes forth impressed, too, that marriage is a failure, but sometimes giving lodgment to the thought that, were the past to be lived over, she might still be the wife of the man she loved and married. Does she, as a rule, contribute the measure of good to the community which she would have done if still a married woman? As the years go on, and this young man and this young woman take on sober, deeper thought, deep down in their hearts do they say that the system which permitted them to break apart was right?

When Better Reason Comes.—How often does not later, better, cooler reason assert itself, and with its magic wand expunge the memory of former troubles, trial and divorce, and bring back these two disunited souls to the connubialistic union which they formerly enjoyed and which they will preserve thereafter unto death? How often does the judge upon the bench listening to the neverending recitals of oft-colored marital troubles, hesitate in the forum of conscience until the imperious obligation of his oath to enforce the laws presses him to the pronouncement of the fateful words which sunders the marriagecompact. How gladly, did proprieties permit, would he fain lay aside the judicial ermine and step from the bench, have a heart to heart talk with these contending parties, point out in unmistakable lines the disadvantages to both that flow from divorce, suggest the infirmities of human nature, their consequent duty to "bear and forbear" with the weaknesses and shortcomings of each other, and constrain them to realize the wisdom of his advice and leave the forum with a forgotten past and an earnest desire to live thereafter in the wedded state.

Fate of the Children.—What becomes, in many instances, of the children of divorced parties? Do they come to the full measure of useful development assigned to children in better and happier home environments? Does the example of a father and mother, separated inspire them with zealous and appreciative emulation of the good in either parent? We have all seen a devoted, tender and true father, separated by law from a woman who lost caste and fell from marital grace, living a life worthy of emulation by his children. We have seen, too, a patient sweet-souled loving mother, separated by law from an unworthy husband who broke away from all the instincts of high manhood and honor, leading a life that was inspirational to her children for all that is good and true and beautiful in life. But these are the exceptions and but give emphasis to the proposition that in a majority of the instances of divorces children of divorced parents digress from the paths of honor, rectitude and morality because of the absence of the directing hand of a father or the gentle influence of a mother, both of which are indispensable conditions, in the absence of death, in the composition of a well-ordered American home.

Home is Republic's Safety.—The American home is the assurance of the propagation of the future sons and daughters who shall people the republic. In what other manner can you preserve this majestic republic for the perfection of its destiny than by contributing to the future, not alone stronger men and women, but men and women instinct with deeper morality as well as higher intellectuality? And how can this instinct be created but through those first, and

deepest, and most lasting impressions instilled in that school of morality, the home? Many men and women, of high character and the most wholesome aspirations have passed through the ordeal of a divorce case unscathed, but the paucity of their number compared with the legion who have undergone the same ordeal under unfavorable circumstances and with unfavorable results as to character and reputation, has been most notable.

Growth is Appalling.—The growth of divorces, in the light of statistics, is appalling. In 1867 the number of divorces granted in the entire United States was 9,937. In 1886 the number had grown to 25,535. And the total number during that period of twenty years aggregated 328,716, of which Indiana's portion was 25,193. In 1870 the number of divorces granted in Indiana was 1,170; in 1880, 1,423; in 1890, 1,721; and in 1900, 4,669. In the year 1900 the ratio of divorces to marriages in the state of Indiana was one divorce to every 5.7 marriages in the entire state. The population of the republic, from the years 1887 to 1886, increased about 60 per cent., while the increase of divorces in the same period was 157 per cent. It is impossible to obtain full statistics since the year 1886, but those at hand indicate that divorces, in percentage, have vastly outrun the percentage of increase in population.

Lawyer Sees Dire Results.—No class of people have the opportunity for insight into human life comparable with lawyers. No class have the opportunity for seeing and judging the effects of divorce like the lawyers. The world at large knows naught save that fact that a divorce has been granted and a couple separated. But the lawyer in the case knows better than any one, outside the family, what that separation involves—the rupture of the wedding covenant, the disruption of the home, the division of the competence that joint hands and heads have gathered, the disposition of the children, the rueful consequences of their divided custody—and too often is he professionally called to witness the downward path which frequently characterizes the career of those whom the law has released from the marriage bonds. Many good men and worthy women have had the recuperative energy and moral strength to live down the trouble of a marital separation, and have been strong enough in mind and heart to see that their children have been reared as types of excellence in training and character, but they are the marked minority of the litigants in the divorce courts.

Heroism in Silence.—There is something admirable, something exquisitely dignified, something splendidly heroic, in the conduct of a wedded pair who, having found themselves mismated and unable to live with mutual comfort, prompted by a high sense of propriety and the good of their children, keep their troubles from the world and refuse the panacea of divorce which our law at present affords.

The commission for the uniformity of state laws, established for a benificent purpose and proceeding under the auspices of the American Bar Association, has tried to do away with the scheme of the effete New Yorker who, unable to get a divorce in his own state, which only recognizes adultery as a sufficient cause, speeds from his family to the Dakotas, and returns to New York in six months with a copy of his divorce decree in his pocket. But the commission has been powerless to evolve any general law on the subject which would be of uniform application in this country, because of the widely divergent views upon the propriety of any divorce law in many states.

Sentiment Against It.—Public sentiment is gradually being forged into an antagonism against divorce. The great churches are vigorously raising the restrictions against the great social evil which is made possible by the laws upon the statute books. Even in our own state Senator Stephen B. Fleming, of our own city, who caught the sentiment, introduced and the last legislature of our state passed a law providing for limited divorce, divorce "*a mensa et thoro*," but until the absolute divorce statute is repealed the new law will not accomplish much good.

No Good Divorce Law.—If anyone asks the question: "What is the best divorce law?" there is but one answer. "There is none." The great profession of the law will not stand in the way of a reform which is demanded by the sense of our higher civilization, even though the change may effect their emoluments. The lawyer has always been found in the march of progress, regardless of the sacrifices entailed. There may be cases in which it may seem that a husband or wife bears a heavy burden, for the relief of which a divorce seems the only proper remedy; but the greatest good to the greatest number should be the objective point of every law, and individual cases of hardship cannot be considered if their consideration involves the retention of a system engendering demoralization of society and the perpetuity of an evil which will not lessen, but will grow to such a force as to threaten the existence of the body politic.

One Obstacle Apparent.—Many men regard these suggestions as too radical, but the fairest days of the Roman republic were those in which divorce was unknown. And he who has at heart the future good of his country, and who, looking into the vista of the future years, casting the horoscope of the republic which we all love so well, and placing her upon the plane of leadership in intellect, culture and strength, cannot fail to notice one obstacle all along the way, which interferes with his anticipations and his best and highest hopes, and that one obstacle is "divorce."

The statute for divorce "*a mensa et thoro*" can be made applicable to every case of marital infelicity, but experience will demonstrate that there will not be one limited divorce where to-day twenty-five absolute divorces are granted. With the abolition of absolute divorce, more careful thought will be indulged in the contracting of marriage; family difficulties will be met with the old-time spirit of forbearance and thoughtful judgment which was in vogue one hundred years ago in this country; the family will be conserved; the home, with its traditions and memories, will be preserved; and our heaven-kissed country will grow stronger as the ages roll on.

BOOK REVIEWS.

TOMPKIN'S SUMMARY OF THE LAW OF PRIVATE CORPORATIONS.

A recent text-book of especial value and interest to law students is that entitled, "A Summary of the Law of Private Corporations," by Leslie Z. Tompkins professor of law in New York University. The author in his preface sufficiently states the purpose of this new addition to the ranks of legal literature. He says: "This work is intended to be a summary of the subject, designed especially for the use of students. To summarize a subject so prolific in decisions, and confine it within the space desired, admits of no extended discussion of the rules as they exist. The ob-

ject has been to state in a systematic and concise way the rules of law on the subject. In doing this the language of the decisions and, in some instances, the language of the text-writers has been used, it being found unnecessary, and in many cases impossible, to state the rule more concisely or accurately.

Printed in one volume of 264 pages and published by Baker, Voorhis & Co., New York.

PROBATE REPORTS, ANNOTATED, VOL. 8.

The eighth volume of that excellent series of reports, known as the "Probate Reports, Annotated," is just issued from the press, and evidences the same painstaking care which has so prominently distinguished other issues of these reports and to which we have called attention on previous occasions. The plan of this new series of reports is to give in about one volume a year, contemporaneous or recent decisions of the highest courts of the different states of the Union upon all matters cognizable in probate and surrogate courts. Each volume will contain about 100 recent cases (in full) with many exhaustive notes. The most important features, however, of a book of this character are the annotations, a complete list of which are as follows: Costs and Attorney Fees; Modern Application of the Term Heirloom; the old common law rule as to paraphernalia, as affected by modern statutes; set off or counterclaim as affecting estate; Statutes of Limitation as Defense to Breach of Trust; Mental Capacity to make a will as affected by Spiritualism; Physical Condition as affecting mental capacity to make a will.

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CLARK ON STREET RAILWAY ACCIDENT LAW.

Narrower and narrower each year grows the horizon of the modern legal text-book. Gradually legal principles are sought after more in their actual application than in any declaration that may be logically or illogically drawn from the abstract statement of the principles themselves. Publishers are making efforts to meet the demand of practicing attorneys for text books that will at once give them the cases that will win the particular case which they have under consideration, without compelling them to wade through the history of the growth of the law from ancient times and to detract the correct rule from old established principles. What the practicing lawyer wants is a case on all fours, and the quickest way possible to find it. A text-book that fulfills in almost every particular the demands of the practicing lawyer is that recently issuing from the press entitled, "A Treatise on Street Railway Accident Law," by Ellery H. Clark, of the Boston Bar. The author in his preface shows the purpose and origin of the work by the following statement: "Believing that the tendency of the present day is towards specialization and concentration, the author, in 1902, published a book on the Street Railway Accident Law of Massachusetts. The kind reception accorded this work by the bench and bar has led to the production of the present volume, dealing with the street railway accident law of the entire country." This work will be undoubted proof of valuable aid to practitioner interested in what is known as damage suit litigation. Printed in one volume of 607 pages, and published by Keefe-Davidson Company, St. Paul, Minn.

CORRESPONDENCE.

A CORRECTION.

To the Editor of the Central Law Journal:

I notice in the CENTRAL LAW JOURNAL, of July 15th, in the column entitled "Humor of the Law" what purpots to be a story of Senator Dubois, of this state. The members of the Idaho bar have not been aware that Senator Dubois ever practiced law in Boise City, or elsewhere in the state for that matter. The story is a good one, however, and ought not to be thrown away simply because your "funny man" attributed it to the wrong source. That story should be told of J. H. Hawley, of Boise, and every member of the bar of Idaho would vouch for its truthfulness.

Yours very truly,

Caldwell, Idaho. JOHN C. RICE.

[ED.: The piece of humor referred to, making the proper changes in the name, is as follows:

J. H. Hawley, when practicing law in Boise City, was sternly reprimanded by a local judge because of alleged contempt of court, and was fined $50.

The next day according to a custom followed in the Idaho courts, the judge called upon Mr. Hawley to occupy the bench for him during the transaction of some comparatively unimportant business. After the judge's departure from the courtroom Mr. Hawley exhibited an instance of remarkable presence of mind turned to the clerk of the court and said:

"Turning to the record of this court for yesterday, Mr. Clerk, you will observe recorded a fine of $50 against one J. H. Hawley. You will kindly make a note to the effect that such fine has been remitted by order of the court."

ANOTHER CORRECTION.

I call attention to No. 5, Vol. 59, p. 87, first column, where general rule of damages is stated to be "exemplary, not punitory damages will be awarded," and suggest that "exemplary" should be changed to "compensatory."

Respectfully,

GEO. W. WAKEFIELD.

Sioux City, Iowa, Aug. 2, 1904.

[This correction is a proper one. We thank our correspondent.—ED.]

HUMOR OF THE LAW.

Defendant was on trial for an assault committed by him on his mother-in-law. The prosecuting attorney announced that his evidence was closed. "Why," said the judge to him, "you haven't called the mother-in-law." "We expect to produce her, your Honor," interposed counsel for the defense, "as a mitigating circumstance."

Giles Jackson, the celebrated negro lawyer of Richmond, in defending one of his clients in the police court, began to read from the Code. The police justice seemed to suspect that Mr. Jackson was reading something which was not there, and interrupted th lawyer, saying: "Mr. Jackson, I never heard of any such law as that." "Well," said the lawyer, "is you 'gwire to hold my client responsible for the ignorance of this court?"

In the New York law school, at a recent lecture on the making of wills the case of a woman in one of Rider Haggard's books was cited. The woman had

a man's will inscribed in ink on her back. And the will was held regular and legal because it had been made in writing.

After giving this practical illustration the professor called on John Smith, saying:

"Is a will so inscribed regular and legal, in your opinion?"

"No," answered Smith.

"Why not?" asked the professor.

"Because it's a skin game," replied Smith.

The professor felt angry enough to order Smith out of the room, but the class laughed so much that he decided to overlook the student's flippancy.

Honorable Henry A. Childs is known throughout New York state as one of the most dignified and learned judges on the bench. At a recent term of court he was very much annoyed because the officer who was stationed just inside the court room door found the enjoyment of a short nap, now and then, much more to his liking than listening to the arguments of the lawyers and the rulings of the court.

One day a well known attorney was about to leave the court room. Court was in session, and the officer was stealing a nap as usual, but awoke just in time to hear the judge say in most strenuous tones, "Mr M——, if you are going from this court room you will please do so very quietly so as not to disturb the officer at the door."

Judge—You are a freeholder?
Prospective juryman—Yes, sir.
Judge—Married or single?
P. J.—Married three years ago last month.
Judge—Have you formed or expressed any opinion?
P. J.—Not for three years past.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL — Ejectment, in which Minor was Not a Party.—Ejectment, in behalf of a minor child of decedent to recover his homestead interest in his father's estate, held not to be abated by reason of a suit by his mother to which he was not a party.—Upton v. Gerber, Mich., 98 N. W. Rep. 854.

2. ACCIDENT INSURANCE—Visible Marks on the Body.—Pallor and emaciation held visible marks on the body, within the requirements of an accident policy.—Root v. London Guarantee & Accident Co., 86 N. Y. Supp. 1053.

3. ACCORD AND SATISFACTION—Common Law Rule.—At common law an acceptance by a creditor of a less sum than that due will not satisfy the demand.—Standard Sewing Mach. Co. v. Gunter, Va., 46 S. E. Rep. 690.

4. ACTION—Improper Joinder of Real and Personal Actions.—A cause of action to recover property in possession of the defendant and reasonable rent is improperly joined with an action to recover a money judgment for personalty converted by other defendants in the action.—Sims v. Cordele Ice Co., Ga., 46 S. E. Rep. 841.

5. ADVERSE POSSESSION—Color of Title.—Deed under which a judgment debtor became owner of land held not to constitute color of title after sale on execution.—Wilson v. Brown, N. Car., 46 S. E. Rep. 762.

6. ALIENS—Negro Born in Africa.—A negro born in Africa held not entitled to recover a penalty, under Civil Rights Law, Laws 1895, ch. 1042 (Laws 1895, p. 974), in the absence of proof of his citizenship.—Fuller v. McDermott, 87 N. Y. Supp. 536.

7. APPEAL AND ERROR—Citation to Appellee.—When an appeal was not taken in open court, and there was no citation thereupon to notify the appellee to appear in this court, the appeal will be dismissed.—Lanzilli v. Morisi, Dist. Col. App., 32 Wash. Law Rep 330.

8. APPEAL AND ERROR — Contest as to Office.—Where, pending a writ of error involving a contest as to office, the term expires, the writ will be dismissed, without costs.—Elbon v. Hamrick, W. Va., 46 S. E. Rep. 1029.

9. APPEAL AND ERROR—Equitable Powers of Court.—On trial *de novo*, the supreme court will not reverse for erroneous admission of evidence, if there is competent evidence to sustain the verdict.—Jefferson County v. Trumbull, Wash., 75 Pac. Rep. 876.

10. APPEAL AND ERROR—Former Action Pending.—Where a plea of former action pending is sustained as to a count in a declaration, a review of the order quashing the count may be had after final judgment by writ of error.—Upton v. Gerber, Mich., 98 N. W. Rep. 854.

11. APPEAL AND ERROR—Grant of New Trial.—The grant of a new trial, on the ground that the verdict is against the weight of the evidence, will not be disturbed, where no abuse of discretion is shown.—Darlington Oil Co. v. Pee Dee Oil & Ice Co., S. Car., 46 S. E. Rep. 720.

12. APPEAL AND ERROR—Irregularities in Bringing Parties into Court.—Departure from the regular prescribed method of bringing parties into court disregarded, where it has brought about a situation which warrants judicial action.—Succession of Carbajul, La., 36 So. Rep. 41.

13. APPEAL AND ERROR—Joinder Sureties on Cost Bond.—Motion to dismiss appeal on ground of nonjoinder of sureties on cost bond and failure to serve notice on them granted, though judgment against sureties was void.—Ætna Ins. Co. v. Thompson, Wash., 76 Pac. Rep. 105.

14. APPEAL AND ERROR—Matters Not Shown in Bill of Exception.—Where the bill of exceptions does not show any objection or exception to an amendment of the complaint, the order allowing the same is not reviewable.—Bessemer Liquor Co. v. Tallman, Ala., 36 So. Rep. 40.

15. APPEAL AND ERROR — Nominal Damages.—Where plaintiff shows himself entitled to merely nominal damages, erroneous refusal to enter judgment for such damages is not reversible error.—Milligan v. Owen, Iowa, 98 N. W. Rep. 792.

16. APPEAL AND ERROR — Reversal and Remand.—Where plaintiff merely moved for judgment notwithstanding the verdict, the case cannot, on reversal of udgment for defendant, be disposed of without a new trial.—Standard Mfg. Co. v. Slot, Wis., 98 N. W. Rep. 923.

17. APPEAL AND ERROR—Second Appeal.—A motion to dismiss a second appeal in equity, because entered while a prior appeal was pending, made 18 months after the case has been briefed, and on the day when the case, after a second setting, is called for argument, denied.—Dorman v. McDonald, Fla., 36 So. Rep. 52.

18. APPEAL AND ERROR—Sheriff's Return.—Where return of a deputy sheriff was traversed, plaintiff was in no way concerned as to the process by which the deputy sheriff was brought into court.—Branan v. Nashville C. & St. L. Ry. Co., Ga., 46 S. E. Rep. 882.

19. ARSON—Occupancy Under Lease.—One in possession and occupancy of a house under lease is not guilty of arson in burning the house.—State v. Young, Ala., 36 So. Rep. 19

20. ASSAULT AND BATTERY—Excessive Penalty.—Under B. & C. Comp., § 1772, punishing a simple assault by imprisonment in the county jail or by fine, one convicted thereof could not be condemned to hard labor, as well as imprisonment.—State v. Houghton, Oreg., 75 Pac. Rep. 822.

21. ASSIGNMENTS—Draft Operating as an Assignment.—Under Act June, 1897, p. 45, ch. 4527, § 127, a draft, not specifying a particular fund for payment, held not to operate as an assignment of the money on deposit with the drawee.—Fulton v. Gesterding, Fla., 36 So. Rep. 56.

22. ASSOCIATIONS—Nature of One Organized for the Benefit of Members Only.—An association, organized for the benefit of its members solely, held not a benevolent or religious association, within Code, § 1017.—State v. Dunn, N. Car., 46 S. E. Rep. 949.

23. ATTORNEY AND CLIENT — Contingent Fee.—Where attorney and client agree that the attorney's fee shall be 50 per cent. of any judgment recovered, held that the client may not by a summary proceeding under Code Civ. Proc. § 66, compel the attorney to forego his lien.—Serwer v. Sarasohn, 86 N. Y. Supp. 888.

24. ATTORNEY AND CLIENT—Membership in Bar Association.—All questions of membership in the Louisiana Bar Association must be left to the association, under its own rules and regulations.—State v. Louisiana Bar Assn., La., 36 So. Rep. 50.

25. ATTORNEY AND CLIENT—Retaining Moneys Collected.—Where an attorney retains money collected for his client, he is not liable to rule, if the money is received merely as agent.—Haygood v. McKenzie, Ga., 46 S. E. Rep. 624.

26. ATTORNEY AND CLIENT—Settlement Without Suit.—An attorney obtaining a favorable settlement of a controversy without suit, is entitled to recover his fees therefor.—Stoutenburgh v. Fleer, 87 N. Y. Supp. 504.

27. BANKRUPTCY—Cancellation of Judgment.—Under Code Civ. Proc. § 1268, a discharged bankrupt held entitled to an order canceling a judgment against him.—Hussey v. Judson, 87 N. Y. Supp. 499.

28. BANKRUPTCY—Compensation of Receiver.—Where, after receiver has been appointed in state court for a firm, the firm is adjudicated bankrupt, the state receiver must pay over the funds to the court in bankruptcy and look to it for his compensation.—Bloch v. Bloch, 86 N. Y. Supp. 1047.

29. BANKRUPTCY—Decree of Dissolution.—A New Jersey corporation may be adjudged a bankrupt, although a formal decree of dissolution has been entered in proceedings against it; the state statute providing that it shall be continued as a body corporate for the purpose of suing and being sued and setting up its affairs.—White Mounting Paper Co. v. Morse & Co., U. S. C. C. of App., First Circuit, 127 Fed. Rep. 643.

30. BILLS AND NOTES—Name of Payee.—Where a note is payable to a payee, with "attorney" attached to his name, and he indorses it in the same manner, the word "attorney" puts the purchaser on inquiry as to ownership.—Hazeltine v. Keenan, W. Va., 46 S. E. Rep. 609.

31. BILLS AND NOTES—Theft of Certified Check.—One in possession, in ordinary course of business, of duly indorsed certified check, held entitled to payment of same irrespective of fact that it was originally stolen.—Poess v. Twelfth Ward Bank, 86 N. Y. Supp. 857.

32. BUILDING AND LOAN ASSOCIATIONS—Rights of Withdrawing Members.—Withdrawing members of building association, insolvent when notice of withdrawal is given, held not to become thereby a creditor entitled to satisfaction before other members.—Colin v. Wellford, Va., 46 S. E. Rep. 780.

33. CARRIERS—Concealment to Avoid Paying Fare.—That defendant, who conceals himself on a train without paying his fare, was under the influence of liquor, does not relieve him, under Pen. Code, § 39.—Brazzell v. State, Ga., 46 S. E. Rep. 837.

34. CARRIERS—Injuries to Passenger by Reason of Derailment of Train.—In an action against a railroad for injuries sustained by a passenger, owing to derailment of a train, the derailment and injury having been shown by plaintiff, the burden was on defendant to show that the accident was not occasioned by its negligence.—Cronk v. Wabash R. Co., Iowa, 98 N. W. Rep. 884.

35. CARRIERS—Limitation of Liability.—Carriers held not exempt from liability for loss of trunk in excess of sum stipulated in receipt, where plaintiff did not know of limitation of liability.—Malone v. Metropolitan Exp. Co., 86 N. Y. Supp. 1039.

36. CARRIERS—Limiting Liability for Delay in Delivery.—A provision, in a contract of shipment, that, on delay by negligence of the carrier, the shipper would accept as compensation the amount expended in purchasing food and water, is invalid.—Bosley v. Baltimore & O. R. Co., W. Va., 46 S. E. Rep. 613.

37. CARRIERS — Pillars in Street.—A street railroad company held not bound to anticipate that a passenger, standing on the running board of an open car, will swing back, so as to come in contact with a pillar in the street.—Canavan v. Interurban St. Ry. Co., 87 N. Y. Supp. 491.

38. CARRIERS—Release of Claims.—Under Civ. Code, § 2276, a shipper, in consideration of a lower freight rate, can relieve the carriers for injuries to live stock by the viciousness of the animals or defects in the cars.—Ragsdale, Harper & Weathers v. Southern Ry Co., Ga., 46 S. E. Rep. 832.

39. CARRIERS—Unlawful Business Combination.—Owners of a grain elevator held entitled to recover damages against railroad companies and an elevator association, because of the companies discriminating in favor of the association.—Kellogg v. Sowerby, 87 N. Y. Supp. 412.

40. CONSTITUTIONAL LAW — Defective Allegation.—A mere general allegation that an act of the legislature is unconstitutional, without calling attention to the particular provision of the constitution with which it conflicts, is too indefinite.—Sayer v. Brown, Ga., 46 S. E. Rep. 649.

41. CONSTITUTIONAL LAW—Incest.—2 Ballinger's Ann. Codes & St. §§ 7228, 7229, defining incest, held not violative of Const. U. S. Amend. 14, prohibiting states from depriving persons of liberty without due process of law.—State v. Glindemann, Wash., 75 Pac. Rep. 800.

42. CONSTITUTIONAL LAW — Removal of Snow and Ice from Sidewalks.—The act of congress approved February 10, 1904, entitled "An act to provide for the removal of snow and ice from the sidewalks of the District of Columbia, and for other purposes," held void for inequality and unjust discrimination between citizens similarly situated and equally entitled to bear the same burden; and a conviction in the police court for a violation of its provisions reversed.—McGuire v. District of Columbia, Dist Col. App., 32 Wash. Law Rep. 374.

43. CONTEMPT — Refusal of Witness to Answer a Question.—The act of a witness in refusing to answer a question propounded to him, if it be his right to decline to answer, will not become a criminal contempt by being adjudged so.—Elliott v. United States, D. C. App., 32 Wash. Law Rep. 293.

44. CONTRACTS—Damages for Rescission of Building Contract.—Where work on a building contract is wrongfully stopped by the owner, the contractors are entitled to rescind, and a subsequent notice to proceed will not relieve the owner from liability for the resulting damages.—Cochran v. Yoho, Wash., 75 Pac. Rep. 815.

45. CONTRACTS—Deed Made for Fraudulent Purposes.—Where a deed is made for fraudulent purposes, neither the grantor nor his privies can invoke the aid of the law to set it aside.—Castellow v. Brown, Ga., 46 S. E. Rep. 632.

46. CONTRACTS—Defense on Ground of Election.—The defense of election, either of remedies or of defendants, is entirely distinct from the defense of equitable estoppel, and the defendant need only show that plaintiff had the right of election, and had exercised it.—Barrell v Newby, U. S. C. C. of App., Seventh Circuit, 127 Fed. Rep. 656.

47. CORPORATIONS — Agreement to Give Proxies. — Plaintiff, who had contracted with stockholders, held not entitled to a rescission because of a breach of agreement between himself and stockholders as to giving of proxies to plaintiff.—Kennedy v. Monarch Mfg. Co., Iowa, 98 N. W. Rep. 796.

48. CORPORATIONS—Dissolution.—Creditor of dissolved corporation held entitled to order settingaside dissolution.—Sullivan County R. R. v. Connecticut River Lumber Co., Conn., 57 Atl. Rep. 287.

49. CORPORATIONS—Right to Control Assets.—A mere stockholder of a corporation has no right to possession and control of the corporation's property as against a regular qualified trustee who was also president of the company.—Oudin & Bergman Fire Clay Min. & Mfg. Co. v. Conlan, Wash., 75 Pac. Rep. 798.

50. CORPORATIONS—Service on President in Foreign State.—Service of process on the president of a foreign corporation, while attempting to settle a claim under a contract made and performed in another state, held insufficient to confer jurisdiction of the corporation.—Louden Machinery Co. v. American Malleable Iron Co. U. S. C. C., S. D. Iowa, 127 Fed. Rep. 1008.

51. COURTS—Duty to Follow Supreme Court Decisions.—The circuit court in the trial of a case, is bound by the decision of the supreme court.—Carson v. Southern Ry. Co., S. Car., 46 S. E. Rep. 525.

52. COURTS—Franchise Tax.—Where, in a suit to restrain the collection of a franchise tax, the bill is not maintainable as to the amount claimed by the state, and the amount of the tax remaining is less than $2,000, the federal court has no jurisdiction.—Coulter v. Fargo, U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 912.

53. CRIMINAL EVIDENCE—Books of Science and Art.—Books of science and art are inadmissible to prove the opinion of experts announced therein, nor can they without being introduced, be read in argument, over objection.—Quattlebaum v. State, Ga., 46 S. E. Rep. 677.

54. CRIMINAL TRIAL—Admonishing Jury.—Where the jury in a criminal case was admonished as to its duties on separation, failure to repeat the admonition on a subsequent separation was not error.—State v. Stockhammer, Wash., 75 Pac. Rep. 810.

55. DEATH—Self-Defense.—In an action for the homicide of plaintiff's husband, where the evidence tends to show that the husband began the conflict and was killed in self-defense, proofs of threats are admissible to throw light on the state of mind of the husband.—McKinney v. Carmack, Ga., 46 S. E. Rep. 719.

56. EVIDENCE — Letters of Agent.—Where plaintiff wrote defendant, asking for payment of a book account, and defendant directed his daughter to reply, it was not error for the court to receive her letter in evidence.—Skidmore v. Johnson, N. J., 57 Atl. Rep. 450.

57. EVIDENCE—Nonsuit.—Where a witness for plaintiff gives testimony that would support the cause of action, the fact that another of her witnesses gives testimony proving a different cause of action held no ground or a nonsuit.—Hopper v. Smith, N. J., 57 Atl. Rep. 389.

58. EXECUTORS AND ADMINISTRATORS—Power of Sale.—A power in a will given an executor to sell and dispose of any of testator's "securities" did not authorize him to sell any land.—Pratt v. Worrell, N. J., 57 Atl. Rep. 450.

59. EXEMPTIONS — Garnishment.—A garnishee cannot raise the point that the fund is not subject to garnishment because the proceeds of exempt property.—Seitz v. Starks, Mich., 98 N. W. Rep. 852.

60. FACTORS—Returning Goods to Consignor in Damaged Condition.—Where a consignee of goods for sale returns them damaged, the consignor is entitled to recover the difference between their value as returned and their value undamaged.—Ives v. Freisinger, N. J., 57 Atl. Rep. 401.

61. FALSE IMPRISONMENT — Liability of Justice.—A justice of the peace is liable for false imprisonment, where he issues a warrant for an offense over which he has no jurisdiction, and the defendant is taken into custody thereunder.—Heller v. Clarke, Wis., 98 N. W. Rep. 952.

62. FIRE INSURANCE—Insurable Interest.—A husband, living with his wife in a house on her separate estate, has no insurable interest therein.—Tyree v. Virginia Fire & Marine Ins. Co., W. Va., 46 S. E. Rep. 706.

63. FRAUDS, STATUTE OF—Appointment of Agents.—The delivery of a conveyance to an authorized agent is as effective as to the purchaser himself, and the statute of frauds does not require the appointment of such an agent to be in writing.—Dorr Cattle Co. v. Des Moines Nat. Bank, Iowa, 98 N. W. Rep. 918.

64. FRAUDULENT CONVEYANCES — Bona Fide Purchaser.—Where a conveyance has been made with intent to defraud, all the estate of the grantor, subject to the rights of the creditors, passes by the deed.—Poling v. Williams, W. Va., 46 S. E. Rep. 704.

65. FRAUDULENT CONVEYANCES — Equity of Redemption.—Where the equity of redemption in a homestead is worth less than $1,000, its conveyance is not fraudulent as against creditors of the grantor.—Palmer v. Bray, Mich., 98 N. W. Rep. 849.

66. FRAUDULENT CONVEYANCES — Parol Trust.—One who conveys land to another without consideration cannot set up a parol trust in his favor.—Poling v. Williams, W. Va., 46 S. E. Rep. 704.

67. FRAUDULENT CONVEYANCES — Insolvent Partnership.—Wife of a member of an insolvent partnership, who had received a deed to her husband's property which was rented by the firm, held not entitled to rents, as against creditors of the firm.—Lawson v. Dunn, N. J., 57 Atl. Rep. 415.

68. FRAUDULENT CONVEYANCES — Judgment Creditor.—A judgment creditor cannot maintain a bill to set aside as fraudulent a quitclaim deed not conveying the fee.—Meeker v. Warren, N. J., 57 Atl. Rep. 421.

69. GARNISHMENT—Effect of Judgment for Garnishee.—The *prima facie* effect of a judgment for a garnishee, on a traverse of his answer denying indebtedness, is that the garnishee was not, at the service of the writ or time of filing his answer, or at any period between those dates, indebted, so as to be liable to a writ of garnishment.—Fulton v. Gesterding, Fla., 36 So. Rep. 56.

70. GUARDIAN AND WARD—Family Meeting.—Any irregularity in an order of court, leaving it to the discretion of the notary to take any five out of nine persons appointed, composing a family meeting, is cured by the act of the notary in calling all nine of the persons appointed.—Succession of Carbajal, La., 36 So. Rep. 41.

71. HOMICIDE—Arrest by Private Person.—An unwarranted attempt by a private person to make an arrest will not justify resistance to the point of an assault with intent to murder.—Dryer v. State, Ala., 36 So. Rep. 38.

72. HOMICIDE—Assault With Intent to Kill.—On the trial of one charged with assault with intent to kill, it was error to instruct that if the jury believed that, had the party died, it would have been murder, it was their

duty to find accused guilty.—Smith v. State, Ga., 46 S. E. Rep. 846.

73. HOMICIDE—Burden of Proof.—On trial for murder, an instruction that if accused, with a deadly weapon, on slight provocation, gave decedent a mortal blow, he is *prima facie* guilty of willful killing, and is guilty of murder in the first degree, held error.—State v. Hertzog, W. Va., 46 S. E. Rep. 792.

74. HOMICIDE—Evidence as to Accidental Killing.—Where accused's defense of an accidental killing was not supported by the evidence, a verdict of guilty will not be set aside.—Gaines v. State, Ga., 46 S. E. Rep. 840.

75. HOMICIDE — Sentence.—On conviction for murder in second degree, sentence to 20 years' imprisonment held not excessive.—State v. Capps, N. Car., 46 S. E. Rep. 780.

76. HUSBAND AND WIFE — Gift to Wife.—A husband may make a valid gift to his wife by transferring an account to her name, though she knows nothing of the transaction at the time —Sparks v. Hurley, Pa., 57 Atl. Rep. 364.

77. HUSBAND AND WIFE — Married Woman's Right to Dispose of Personalty —During her lifetime a married woman may absolutely dispose of or convey her personalty without the consent of her husband.—Kelley v. Snow, Mass., 70 N. E Rep. 89.

78. INDICTMENT AND INFORMATION—Blank for Name. —A blank in the indictment for the given name of the defendant may be filled after trial begun.—State v. Matthews, La., 36 So. Rep. 48.

79. INDICTMENT AND INFORMATION—Selection of Grand Jurors.—Irregularity in jury commissioners failing to insist on prepayment of taxes as prerequisite to a place on jury list, as required by Code, §§ 1722-1725, held not ground for quashing indictment.—State v. Daniels, N. Car., 46 S. E. Rep. 743.

80. INJUNCTION—Propriety of Remedy for Violation of Local Option Law.—The question whether a liquor dealer has violated the local option law, involving the validity of a license issued to him, cannot be tested by injunction, but only by a criminal proceeding in which the right of trial by jury, guarantied by Const. art. 1, § 13, can be accorded defendant.—Hargett v. Bell, N. Car., 46 S. E. Rep. 749.

81. INTERPLEADER—Power of Sale.—Where complainant with respect to a fund in dispute has entered into an independent contract with one defendant, an interpleader will not be decreed.—Pratt v. Worrell, N. J., 57 Atl. Rep. 450.

82. INTOXICATING LIQUORS—Bond Conditioned upon Observance of Liquor Law.—Legislature, in addition to other civil and criminal penalties, has the right to require of liquor dealers a bond conditioned for observance of liquor law.—Cullinan v. Burkhard, 86 N. Y. Supp. 1003.

83. INTOXICATING LIQUORS—Keeping Saloon Open on Legal Holiday.—Under Comp. Laws 1897, § 5395, a person whose saloon was kept open on a holiday by his barkeeper, in disregard of instructions to the contrary, held guilty of violating the statute.—People v. Kriesel, Mich., 98 N.W. Rep. 850.

84. INTOXICATING LIQUORS — Order for Local Option Election.—An order of the commissioners' court for a local option election is not objectionable, though it does not say in terms that the election is to be held by the "qualified voters" of the county.—Thurmond v. State, Tex., 79 S. W. Rep. 316.

85. INTOXICATING LIQUORS—Sale on Election Day.—Under Acts 1901, p. 266, ch. 89, § 76, it is no offense for one who has a license to retail spirituous liquors to sell liquors on an election day.—State v. Edwards, N. Car., 46 S. E. Rep. 766.

86. INTOXICATING LIQUORS—Saloon and Restaurant.—Maintenance of a saloon and restaurant in the same building, with an adjustable partition, which is kept closed on Sunday, is not a violation of the liquor law. —*In re* Cullinan, 86 N. Y. Supp. 1046.

87. JOINT ADVENTURES — Intent of Parties.—An arrangement for pool and sale of stock held to create a joint interest, imposing on parties fiduciary obligations of partners.—Spier v. Hyde, 86 N. Y. Supp. 285.

88. JUDGMENT—Collateral Attack. — A decree of a court of another state having jurisdiction of the parties held conclusive, agatnst collateral attack, that the bill warranted the personal judgment.—American Trading & Storage Co. v. Gottstein, Iowa, 98 N. W. Rep. 770.

89. JUDGMENT—Default.—Where the court, on motion to strike a plea and enter default, orders the plea amended by a certain time, the clerk cannot, without further orders, enter default as for want of a plea after such time.—Knight v. Dunn, Fla., 36 So. Rep. 62.

90. JUDGMENT—Discretion of Court.—Where a general demurrer was sustained, and plaintiff offered to amend, the supreme court will not interfere with the judgment refusing to permit the reinstatement —Bowen v. Wyeth, Ga., 46 S. E. Rep. 823.

91. JUDGMENT—Garnishment.—An answer to a second writ of garnishment, setting up prior judgment for the garnishee in proceedings between the same parties more than two years before the second garishment, held bad.—Fulton v. Gesterding, Fla., 36 So. Rep. 56.

92. JUDGMENT—On Whom Binding.—A judgment *in rem* as to matters involved in collateral litigation between particular parties is binding only on those who actually litigated such matters and their privies.—Sorensen v. Sorensen, Neb., 98 N. W. Rep. 837.

93. JUDGMENT—Priority of Liens in Suit for Partition. —In a suit for partition, the judgment liens held entitled to preference over attorney's lien for services.—Atlee v. Bullard, Iowa, 98 N. W. Rep. 889.

94. JUDGMENT—Res Judicata —Federal court judgment held *res judicata* in state court, though resting on conclusion of law as to which the state court might differ.—Rew v. Independent School Dist. of Sioux City, Iowa, 98 N. W. Rep. 802.

95. JUDGMENT—Review of Decree.—Under the uniform procedure act of 1887, the superior court on the equity side has the same authority during the term to review its judgments as the courts of law had before the passage of the act.—Perkins v. Castleberry, Ga , 46 S. E Rep. 825.

96. JUDGMENT —Signatures Required in Execution Sale —It is immaterial whether a judgment requires the signature of plaintiff's attorney or of the court, where it was signed by both.—Arrowwood v. McKee, Ga., 46 S. E. Rep. 871.

97. JURISDICTION—Judicial Notice of City Ordinances. —State courts of general jurisdiction do not take judicial notice of city ordinances.—Boston v. Abraham, 86 N. Y. Supp. 863.

98. JURY—Time Within Which to Ask for Special Jury. —After a case has been placed on the calendar to be tried by a general jury, an application for a special jury comes too late.—Rauche v. Blumenthal, Del., 57 Atl. Rep. 368.

99. LANDLORD AND TENANT—Action to Annul Prior Lease.—Where a bill is filed by subsequent lessees to set aside and annul the prior lease, the landlord is a necessary party.—Pyle v. Henderson, W. Va., 46 S. E. Rep. 791.

100. LANDLORD AND TENANT — Assault by Servant.— Assault by hall boy on tenant held not to constitute an eviction.—Haas v. Ketcham, 87 N. Y. Supp. 411.

101. LANDLORD AND TENANT—Construction of Lease. —A clause in a lease providing for a forfeiture on default in any covenants held to apply to covenants not to do something well as covenants to do something. —West Shore R. Co. v. Wenner, N. J., 57 Atl. Rep. 408.

102. LANDLORD AND TENANT — Denial of Landlord's Title.—Where a tenant has rescinded the lease by suing the landlord as owner, commencement of suit by the landlord to recover the land and quiet title thereto is an acceptance of the rescission.—Snyder v. Harding Wash., 75 Pac. Rep. 812.

103. LANDLORD AND TENANT—Knowledge of Unsafe Condition of Premises.—A tenant, having knowledge of the unsafe condition of the premises, held not necessarily charged with contributory negligence in continuing o live on the premises.—Keating v. Mott, 86 N. Y. Supp. 1041.

104. LANDLORD AND TENANT — Limitations.—Where one contracts to pay money in two years, and gives a judgment note payable on demand, limitations do not begin to run for two years.—Bonbright v. Bonbright, Iowa, 98 N. W. Rep. 784.

105. LANDLORD AND TENANT—Limitations as Affecting Action of Ejectment.—Period in which limitations run against executors as trustees should be counted in determining whether action of ejectment by infant beneficiaries is barred.—Brown v. Doherty, 87 N. Y. Supp. 563.

106. LANDLORD AND TENANT—Purchaser's Knowledge of Tenancies.—A purchaser of real estate "subject to existing tenancies," who found tenants in actual possession, held conclusively presumed to have ascertained the nature, extent, and terms of the existing tenancies.—Anderson v. Connor, 87 N. Y. Supp. 449.

107. LANDLORD AND TENANT—Rival Claimants to Possession of Leased Premises.—Where equity has taken cognizance of a case involving the right of rival claimants to the possession of leased premises, it can place the party whom it finds entitled thereto in possession.—Gaffey v. Northwestern Mut. Life Ins. Co., Neb., 98 N. W. Rep. 826.

108. LANDLORD AND TENANT — When Payable.—Rent held not payable in advance, under a lease providing for payment of rent in equal monthly installments on the 1st day of each month during the term.—Goldsmith v. Schroeder, 87 N. Y. Supp. 558.

109. LARCENY—Sufficiency of Indictment.—The time stated in an indictment for larceny is not material, and proof of larceny at any time before the indictment will sustain a conviction.—State v. Carr, Del., 57 Atl. Rep. 870.

110. LIFE INSURANCE—Death Before Delivery of Policy.—Where a policy of life insurance was issued, but not actually delivered, before the death of the applicant, the rights of the parties were not altered by a payment of the premium by a third person after the applicant's death.—Stringham v. Mutual Life Ins. Co., Oreg., 75 Pac. Rep. 822.

111. LIFE INSURANCE—Requisites of Assignment.—The assignment of a life insurance policy does not require a writing.—Barnett v. Prudential Ins. Co., 86 N. Y. Supp. 842.

112. LIMITATION OF ACTION—Action for Price of Lands Sold.—In an action for the price of land sold, held, that limitations did not begin to run in favor of the purchaser until after a reasonable time within which the vendor could settle his title.—Bryant v. Atlantic Coast Line R. Co., Ga., 46 S. E. Rep. 829.

113. LIMITATION OF ACTIONS — Infancy.—The doctrine of reasonable time after majority for disaffirmance or approval of acts done in infancy does not affect the operation of limitations on actions accruing during infancy.—Cahill v. Seitz, 86 N. Y. Supp. 1009.

114. MALICIOUS MISCHIEF—Evidence of Ill Will.—On trial for malicious mischief, evidence of ill will on the part of accused toward prosecuting witness was admissible.—State v. Wideman, S. Car., 46 S. E. Rep. 769.

115. MANDAMUS — Amendment to Pleadings.—*Mandamus* will not lie to review the ruling of the trial court in allowing plaintiff to amend his declaration.—Blackburn v. Alpena Circuit Judge, Mich., 98 N. W. Rep. 754.

116. MANDAMUS—Supersedeas.—The remedy, on refusal of the district court to fix the amount of a *supersedeas*, is by *mandamus*.—McBride v. Whitaker, Neb., 98 N. W. Rep. 847.

117. MASTER AND SERVANT — Assumed Risk.—Employee, as cranesman on derrick car, held to have assumed risk of injury resulting from his failure to anchor the car.—Wagner v. New York C. & St. L. R. Co., 86 N. Y. Supp. 921.

118. MASTER AND SERVANT—Assumed Risk Question for Jury.—Where a workman has placed himself in a position of probable danger, where he has the right to expect a warning, and is injured from failure to give the warning, the question whether he assumed the risk is for the jury.—Albanese v. Central R. Co., N. J., 57 Atl. Rep. 447.

119. MASTER AND SERVANT — Contract for Permanent Employment.—A contract for permanent employment as counsel for a corporation held satisfied by employment for the term of a year at a fixed salary.—Sullivan v. Detroit, Y. & A. A. Ry. Co., Mich., 98 N. W. Rep. 756.

120. MASTER AND SERVANT—Dangerous Employment.—A servant having voluntarily consented to work in a dangerous position, with knowledge of the surrounding circumstances and with the precautions afforded him, held to have assumed the risk of injury, notwithstanding such precautions.—Ryan v. Third Ave. R. Co., 86 N. Y. Supp. 1070.

121. MASTER AND SERVANT—Faulty Petition Causing Nonsuit.—Where plaintiff alleged that he was injured by being put at work by defendant without warning as to the danger of the employment but his evidence showed injury by defective appliances, a nonsuit was properly granted.—Moyer v. Ramsey-Brisbane Stone Co., Ga., 46 S. E. Rep. 844.

122. MASTER AND SERVANT—Injury Caused by Incompetent Fellow Servant.—If the agent appointed to select employees is negligent, such negligence is that of the master.—Hilton & Dodge Lumber Co. v. Ingram, Ga., 46 S. E. Rep. 895.

123. MINES AND MINERALS—Injury to Employee in Cage at Mine.—Mine employee held not to assume risk of injury from being thrown from a cage through the negligence of the mine superintendent.—Beresford v. American Coal Co., Iowa, 98 N. W. Rep. 902.

124. MONOPOLIES—City Lighting.—A city having the power to contract for lights for a certain period, its contract is not void because of its exclusiveness.—Davenport Gas & Electric Co. v. City of Davenport, Iowa, 98 N. W. Rep. 892.

125. MUNICIPAL CORPORATIONS — Negligence in Falling Into Ditch in Highway.—In an action against a city by plaintiff, who fell into a ditch in the highway, question of his contributory negligence was for the jury.—Pate v. City of Atlanta, Ga., 46 S. E. Rep. 827.

126. MUNICIPAL CORPORATIONS—Notice of Claim for Injuries.—In action against city for injuries, owing to defective sidewalk, held, that there was no evidence of notice of claim to the city.—Cresler v. City of Asheville, N. Car., 46 S. E. Rep. 738.

127. MUNICIPAL CORPORATIONS—Track Across Public Street.—Permission by city to private individual to occupy public street with private railroad switch held void.—Swift v. Delaware, L. & W. R. Co., N. J., 57 Atl. Rep. 456.

128. PARTNERSHIP—Amending Petition as to Designation of Parties.—A petition in a suit against the C. H. P. Co., a corporation, is amendable by striking the words "a corporation," and alleging that the company is a partnership.—C. H. Perkins Co. v. Shewmake & Murphey, Ga., 46 S. E. Rep. 832.

129. PERJURY—Sufficiency of Indictment.—Averment of knowledge of falsity is not, in general, necessary in an indictment for perjury, except where the false testimony is given on information and belief.—State v. Gallaugher, Iowa, 98 N. W. Rep. 906.

130. PERPETUITIES — Construction of Will.—A devise in trust to pay income to testator's children, the share of a child in the principal dying leaving descendants to be paid to them, held not to violate the statute of perpetuities.—Loyd v. Loyd's Exr., Va., 46 S. E. Rep. 687.

131. PLEADING—Confession and Avoidance.—Where a replication was in confession and avoidance, the de-

fendant held under no duty to offer proof of facts alleged in his plea.—Lucas v. Stonewall Ins. Co., Ala., 36 So. Rep. 40.

132. SALES—Fraudulent Misrepresentations.—Sale of personalty held induced by fraudulent misrepresentations of the buyer to a commercial agency.—Pier Bros. v. Doheny, 86 N. Y. Supp. 971.

133. SALES—Implied Warranty.—A purchaser of personalty under an implied warranty that it is suitable has a reasonable time within which to test the same.—Von Dohren v. John Deere Plow Co., Neb., 98 N. W. Rep. 830.

134. SCHOOLS AND SCHOOL DISTRICTS — Injury to Scholar.—A school district held not liable for personal injury to a scholar from its negligent furnishing of unsafe means of conveying children to and from school.—Harris v. Salem School Dist. N. H , 57 Atl. Rep. 332.

135. STATUTES—Establishing Excise Department.—An act establishing an excise department in all towns and cities, except cities of the first class, is not a special act within the constitution.—Schwartz v. City of Dover, N. J., 57 Atl. Rep. 394.

136. STATUTES—Special Legislation.—That a statute constitution prohibits certain species of state legislation, enabling tho prohibited matters to be done without direct legislative action, does not render such method exclusive, or prohibit the legislature from acting thereon.—State v. Board of Trustees of Policemen's Pension Fund, Wis., 98 N. W. Rep. 954.

137. STREET RAILROADS—Collision with Push Cart.—A motorman held not negligent in not anticipating that a push cart would run into the car after the head of the car had safely passed it.—Schneiders v. Central Crosstown R. Co., 87 N. Y. Supp. 453.

138. STREET RAILROADS—Concurrent Negligence at Crossing.—Plaintiff, in action against street railroad for personal injuries, held entitled to recover, though himself negligent.—Richmond Passenger & Power Co. v. Gordon, Va., 46 S. E. Rep. 772.

139. STREET RAILROADS—Killing Cattle.—In an action against a street railroad company for killing plaintiff's cow, evidence held to support a finding that the motorman was guilty of negligence.—Anniston Electric & Gas Co. v. Hewitt, Ala., 36 So. Rep. 39.

140. STREET RAILROADS—Paramount Right in Street.—Right of a street railway to the use of its tracks must be exercised in connection with the rights of others, using them from necessity to pass around excavations, etc.—Frank v. Metropolitan St. Ry. Co., 86 N. Y. Supp. 1018.

141. SUBROGATION—Rights of Surety on Supersedeas Appeal Bond.—Surety on supersedeas appeal bond held entitled to be subrogated to the judgment creditor's rights against the surety on a bond formerly given for the dissolution of an attachment.—Fidelity & Deposit Co. of Maryland v. Bowen, Iowa, 98 N. W. Rep. 897.

142. TAXATION—Capital Stock.—"Capital stock," as used in the tax law, does not mean share stock, but means the actual money or property paid in and possessed by the corporation.—People v. Feitner, 87 N. Y. Supp. 304.

143. TAXATION—Deduction of Tangible Taxable Property.—A valuation of an express company's intangible property taxable in Kentucky, including tangible property outside of the state, which constituted no part of the corporation's general plant or franchise, held erroneous.—Coulter v. Weir, U. S. C. C. of App., Sixth Circuit, 127 Fed. Rep. 897.

144. TAXATION—Steamships Enrolled Outside of State.—Steamships owned by foreign corporation, enrolled out of the state, transporting passengers and freight on foreign tickets and bills of lading between points in the state and ocean-going vessels, have their legal *situs* for taxation within the state.—Old Dominion S. S. Co. v. Commonwealth, Va., 46 S. E. Rep. 783.

145. TELEGRAPHS AND TELEPHONES—Agent of Whom.—In the transmission of a telegram, the telegraph company is the agent of the sender, to whom the recipient must look for damages for error in the transmission.—Crooke v. Western Union Tel. Co., Ga., 46 S. E. Rep. 826.

146. TORTS—Injury Sustained by Reason of Defects in Buggy.—The manufacturer of a buggy, who sells it to a city for the use of an employee, held liable to the person whose use of the buggy was contemplated at the time of sale for injuries caused by defects.—Woodward v. Miller & Karwisch, Ga., 46 S. E. Rep. 847.

147. TRADE MARKS AND TRADE NAMES—Proprietary Medicine Label.—Under Rev. St. 1898, § 1409g, a proprietary medicine label, which falsely states that the medicine put up by physician, will not be protected by injunction.—Lemke v. Dietz, Wis., 98 N. W. Rep. 936.

148. TRIAL—Affirmative Charge.—Where there is conflicting evidence on a material issue, it is error to give an affirmative charge for plaintiff.—Smith v. Klay, Fla., 36 So. Rep. 54.

149. TRIAL—Special Findings on Particular Findings.—The jury should not be required to find specially for defendant on any of the several counts of a complaint, where they are liable on any one.—Bessemer Liquor Co. v. Tillman, Ala., 36 So. Rep. 40.

150. TRIAL—Sufficiency of Evidence.—Where the testimony is sufficient to be submitted to the jury, the court should not tell them that the evidence is not strong and convincing.—Jones v. Warren, N. Car., 46 S. E. Rep. 740.

151. TRIAL—Taking Papers to Jury Room.—Allowing the jury to take memoranda to the jury room held not an abuse of discretion.—Rickeman v. Williamsburg City Fire Ins. Co., Wis., 98 N. W. Rep. 960.

152. TRIAL—Transfer from Equity to Law Calendar.—Where complaint seeks equitable relief, but shows cause for a remedy at law, it is error to dismiss the complaint: but it should be placed on the law calendar.—Gilbert v. Bunnell, 86 N. Y. Supp. 1123.

153. TROVER AND CONVERSION—Ownership of Dog.—In an action for conversion of a dog, held not error requiring a new trial for the court to state that he did not consider the question of a reasonable time in which to demand the dog in the case, and that if plaintiff did not call for the dog as agreed, and for a long time defendant spent money and time on the dog, then the dog would belong to defendant.—Knox v. Cook, Ga., 46 S. E. Rep. 868.

154. TRUSTS—Liability of Trustee.—In the absence of special limitation, a contract by a trustee relative to the trust property binds him personally.—Hussey v. Arnold Mass., 70 N. E. Rep. 87.

155. TRUSTS—Power of Revocation.—The simple return of a trust agreement by the trustee to the donor will not, of itself, change the legal title of the trustee or the rights of the beneficiaries.—Kelley v. Snow, Mass., 70 N. E. Rep. 89.

156. TRUSTS—Transactions Between Trustee and Beneficiary.—Purchase by trustee from *cestui que* trust is voidable though made for fair price and without undue influence.—Butman v. Whipple, R. I., 57 Atl. Rep. 379.

157. VENDOR AND PURCHASER—Money Had and Received.—Where one of two joint owners of land, by contract under seal not authorized by his co-owner, sold the property to plaintiff, receiving certain payments on account, and thereafter the contract was rescinded, plaintiff could recover in *assumpsit* the money so paid.—Arbogast v. Mylius, W. Va., 46 S. E. Rep. 809.

158. VENUE—Convenience of Witnesses.—A change in the place of trial will not be ordered for convenience of witnesses alone, where the change is from a rural county to the county of New York.—Hirshkind v. Mayer, 86 N. Y. Supp. 836.

159. WATERS AND WATER COURSES—General Fire Protection.—A water company contracting with a city to furnish water for general fire protection is bound to use ordinary care to supply a sufficiency therefor.—Town of Ukiah City v. Ukiah Water & Improvement Co., Cal., 75 Pac. Rep. 773.